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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 169.

THOMAS M. RIGGINS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED JANUARY 27, 1903.

(19,616.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 5, 1905.

1 THE UNITED STATES OF AMERICA,
Northern District of Alabama, Northern Division.

Pleas had at a regular term of the United States circuit court, in and for the northern division of the northern district of Alabama, begun and held at the United States court rooms, in the city of Huntsville, in said division and district, on the second Tuesday in October, (it being the eleventh day thereof) in the year of our Lord, one thousand nine hundred and four, and of the Independence of the United States of America, the one hundred and twenty-eighth year—present, Hon. Thos. G. Jones, United States district judge, in and for the northern and middle districts of Alabama, presiding, Hon. Thos. R. Roulhac United States attorney, N. L. Steele and W. H. Standifer, assistant United States attorneys, D. N. Cooper, United States marshal, and Chas. J. Allison, clerk—among other proceedings had were the following:—

2 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

THE UNITED STATES
vs.
THOMAS M. RIGGINS. } Order Remitting Cause to Circuit Court.

The indictment in this cause having been found in and presented to the district court of the United States in and for the northern division of the northern district of Alabama, and the said indictment being for a capital offence, it is ordered by the court that said indictment be remitted to the next session of the circuit court of the United States in and for the northern division of the northern district of Alabama, and that this order be entered upon the records of the court.

In open court, this 24th day of October, 1904.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

THE UNITED STATES
vs.
ROBERT POWELL and THOMAS RIGGINS. } Order Granting Severance.

In the above stated cause comes the attorney for the United States and moves the court for a severance in said cause as to the said Robert Powell, and Thomas Riggins, and the said motion being duly considered by the court, it is hereby granted, and a severance is hereby ordered in said cause as to the said Robert Powell, and Thomas Riggins.

In open court, October 26th, 1904.

1—169

3 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

UNITED STATES
vs.
THOMAS M. RIGGINS. } Petition of Thomas M. Riggins, Defendant.

To the honorable the judges of said court:

Your petitioner, Thomas M. Riggins, respectfully represents:

That he is a citizen of the State of Alabama, and of the United States, residing in the city of Huntsville, in said State of Alabama; that he is restrained of his liberty by Daniel N. Cooper, United States marshal for the northern district of Alabama, and is now imprisoned and in custody of said marshal, under a writ of capias, issued on the 26th day of October, 1904, by the clerk of the circuit court of the United States for the northern division of the northern district of Alabama. A copy of said writ is hereto attached, marked Exhibit "A," and prayed to be taken as a part of this petition.

The said writ of capias was so issued by said clerk for the arrest and apprehension of your petitioner by reason of a certain indictment being filed in said court, preferred by the grand jury of said court at the October term, 1904, wherein your petitioner and one Robert Powell are charged with a conspiracy, combination or confederation with the intent to injure, oppress, threaten and intimidate one Horace Maples, a citizen of the United States in the enjoyment of the rights, privileges and immunities secured to him under the laws of the United States. A copy of said indictment for more particularity of averment and for minute specifications of the charges so made against him by said grand jury is herewith filed, marked Exhibit "B," and prayed to be taken — a part of this petition, as if the same were set forth at length herein.

Petitioner avers that he is restrained of his liberty, by said marshal, by reason of said capias, so issued under said indictment, and that he is held in custody by reason thereof, and for no other cause and on account of no other writ, charge or indictment.

Petitioner avers that his said imprisonment and the restraint of his liberty by said Daniel N. Cooper as United States marshal
4 is illegal and without warrant of law, in this, that said indictment and no count thereof prefers a charge against petitioner, valid under the Constitution and laws of the United States.

Petitioner further shows that the said indictment and no count thereof charges any offence or crime of which this court has jurisdiction, or which is punishable under the laws of the United States,

Petitioner avers that said indictment, charging him, together with one Robert Powell, and others to the grand jury unknown, with entering into a conspiracy or combination to injure, threaten and oppress one Horace Maples, a citizen of the United States, of

African descent and color, in denying to him, said Horace Maples, a trial by jury upon an indictment pending in the courts of Alabama for murder, by hanging him, the said Horace Maples, charges no offence violative of any right, privilege or immunity secured to said Horace Maples under the Constitution of the United States, punishable under any statute passed in pursuance thereof.

Petitioner, avers that said indictment, charging him, together with one Robert Powell, and others to the grand jury unknown with entering into a conspiracy, combination or confederation to injure, threaten and oppress one Horace Maples, a citizen of the United States, of African descent and color, in denying to him said Horace Maples, by reason of his race, a trial by jury upon an indictment pending in the courts of Alabama, against him for murder, whereby his guilt or innocence might be determined, charges no offence against petitioner, violative of any right, privilege or immunity secured to him, the said Horace Maples, under the Constitution of the United States, punishable under any statute passed in pursuance thereof.

Petitioner further avers, that it does not appear from said indictment that the conspiracy, combination or confederation therein alleged was formed and entered into, through any law of the State of Alabama, thereby authorizing said alleged conspiracy, combination or confederation, or that any law of said State of Alabama, authorized its citizens or other persons, to enter into a conspiracy, to injure, threaten or oppress the said Horace Maples, a citizen of the United States, of African descent or color or other person of African descent, or color, by denying to him said Horace Maples, a person of African descent, by reason of his race, the right, privilege and immunity of a trial by jury to determine his guilt or innocence, upon an indictment for murder, pending against him in the courts of Alabama.

Petitioner avers, further, that it appears from said indictment that said alleged conspiracy was formed and entered into, by petitioner, and others, to take from the county jail, the said Horace Maples, who was then therein confined, under the custody and protection of the sheriff, aided by the Alabama national guard, the said sheriff and other State officers and said Alabama national guard, acting under the laws of the State of Alabama, designed for the protection of persons charged with crime against the laws of the State of Alabama.

Wherefore, petitioner prays that a writ of *habeas corpus* be granted unto your petitioner, directed to said Daniel N. Cooper, as such United States marshal, commanding him to bring before this honorable court the body of your petitioner with the cause of his detention; that on the hearing of this petition that it may be adjudged that the charges contained in said indictment are invalid and wiyhout warrant in law, and that your petitioner be discharged from the custody of said marshal and from further prosecution in this behalf.

And he will ever pray.

T. M. RIGGINS.

Sworn to and subscribed before me, this 26th day of October, 1904.
[Seal of U. S. Circuit Court.]

CHAS. J. ALLISON,
Clerk U. S. Circuit Court.

Filed in clerk's office, Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

6 EXHIBIT "A."

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

The President of the United States of America to the marshal for the northern district of Alabama, Greeting:

You are hereby commanded that you take the body of Thomas Riggins, if he shall be found in your district, and him safely keep, so that you may have his body before the circuit court of the United States of America, for the northern division of the northern district of Alabama, to be held at Huntsville, in said district, at the present term, or on the first day of next term, to answer unto indictment for violation of section 5508 and 5509, of the Revised Statutes of the United States, and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 26th day of October, 1904.

Issued 26th day of October, 1904.

{ Seal United States Circuit Court, Northern District of Alabama, Northern Division. }

CHAS. J. ALLISON,
Clerk Circuit Court, Nor. Dist. Ala.

7 EXHIBIT "B."

In the District Court of the United States for the Northern Division of the Northern District of Alabama, October Term, 1904.

The grand jurors of the United States, elected, impanelled, sworn and charged to inquire for the body of the said northern division of the northern district of Alabama, upon their oaths present:—

That, heretofore, on to-wit: the 7th day of September, in the year of our Lord, one thousand nine hundred and four, in the said northern division of the northern district of Alabama, in the county of Madison, and State of Alabama, within the jurisdiction of this court, and before the finding of this indictment, Robert Powell, and Thomas Riggins, whose Christian names are to the said grand jurors otherwise unknown, did conspire, combine and confederate together,

and with divers other persons to the said grand jurors unknown, to injure, threaten, oppress and intimidate one Horace Maples, a citizen of the United States in the enjoyment of a right, privilege and immunity secured to him by the Constitution and laws of the United States, to-wit, the right, privilege and immunity of him the said Horace Maples, a citizen of the United States as aforesaid, when accused of crime against the laws of the State of Alabama, to have a trial by due process of law and to be held harmless and acquitted if innocent, and to be punished if guilty, only after trial in the courts of the said State of Alabama, according to its laws; and the grand jurors aforesaid do further present: that the said persons above named, Robert Powell and Thomas Riggins, and divers other persons to said grand jurors unknown, as aforesaid, with whom they confederated, combined and conspired as aforesaid, well knew, as was the fact, that at the time they so conspired, combined and confederated as aforesaid, that the said Horace Maples was then in the lawful custody of the officers of the State of Alabama, to answer the charge of murder under the laws of the State of Alabama, and that the sheriff of Madison county, Alabama, and a detachment of the Alabama national guard which he had summoned to his assistance, were endeavoring to safely keep the said Hor-
8 ace Maples, a citizen of the United States as aforesaid, that he might enjoy the right, privilege and immunity secured to him by and under the constitution and laws of said State, to be tried by due process of law and acquitted, if innocent, or punished according to law, if found guilty, in the courts of the State of Alabama, and to that end the said sheriff and said detachment of said guard were endeavoring to prevent a mob from taking said Maples from the jail of said Madison county, Alabama, where he should be lawfully confined, and where the sheriff had confined him, and to prevent said mob from hanging him to prevent him, the said Maples' enjoyment of the said right, privilege and immunity secured to him under the constitution and laws of the State of Alabama; and that in the furtherance of the said conspiracy so formed for the purpose aforesaid, and to effect the object thereof, the said Robert Powell and Thomas Riggins, did, on to-wit: the 7th day of September, 1904, in the northern division of the northern district of Alabama, aforesaid, go upon the highway and streets of the city of Huntsville, in the county of Madison aforesaid, and did then and there unlawfully, feloniously, wilfully, premeditatedly and with malice aforethought, kill and murder the said Horace Maples by hanging him by the neck until he was dead, or by some other means to the said grand jurors unknown, and that the said unlawful killing, with malice aforethought was done in order that the said Horace Maples might be deprived of the right, privilege and immunity secured to him under the constitution of the State of Alabama, to be tried by due process of law, and acquitted, if innocent, and punished if found guilty, in the courts of the State of Alabama, in accordance with, and in the manner prescribed by the laws of

the said State of Alabama, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Second Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place aforesaid, and within the jurisdiction aforesaid, in the said county of Madison, and State of Alabama, the said Robert Powell and Thomas Riggins, whose Christian names are to the said grand jurors otherwise unknown, did conspire, and confederate together and with divers other persons to the said grand jurors unknown, to injure, threaten, oppress and intimidate one Horace Maples, a citizen of the United States, of African descent and of color, in the enjoyment of a right privilege and immunity secured to him by the Constitution and laws of the United States, to-wit: the right, privilege and immunity, of him, the said Horace Maples, a citizen of the United States, of African descent and color, when accused of crime against the laws of the State of Alabama, to have a trial by due process of law as provided in said State, and to be held harmless, if innocent and to be punished if guilty, only after trial in the courts of the State of Alabama, according to its laws; and the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Robert Powell, and Thomas Riggins, and the said other persons to said grand jurors unknown, with whom they confederated, combined and conspired as aforesaid, well knew at the time they so conspired, combined, and confederated as aforesaid, that the said Horace Maples was then in the lawful custody of the officers of the said State of Alabama, to answer the charge of murder under the laws of the said State of Alabama, and that the sheriff of said Madison county, Alabama, and a detachment of the Alabama national guard, a body of militia created and organized by the laws of the State of Alabama, which he had summoned to his assistance, were endeavoring to safely keep the said Horace Maples a citizen of the United States, and of African descent and of color, as aforesaid that he might enjoy the right, privilege and immunity secured to him under the constitution and laws of the said State, to be tried by due process of law, which trial by due process of law, it was the duty of the State of Alabama, and its officers, under the Constitution and laws of the United States, to afford and secure the said Horace Maples, a citizen of the United States, and of African descent and of color as aforesaid, and acquitted if innocent, or punished according to law if found guilty, in the courts of the State of Alabama, and to that end were endeavoring to prevent a mob composed of white persons from taking the said Maples from the jail of Madison county, Alabama, where the sheriff had confined him, and where the said Maples was lawfully entitled to be confined and to be kept safely to await his trial by due process of law, and where the said Maples was so lawfully confined by the sheriff of said Madison county Alabama,

and to prevent the said mob from hanging him, the said Maples, to prevent his enjoyment of the right, privilege and immunity so secured to him under the Constitution and laws of the United States, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Third Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that upon to-wit, the 7th day of September, in the year of our Lord one thousand nine hundred and four, in the county of Madison, and State of Alabama, and within the jurisdiction of this court, one Horace Maples, a citizen of the United States, and a person of African descent and of color, was accused of a crime against the State of Alabama, to-wit: the crime of murder, and was then lawfully in the custody of the sheriff, an officer of the State of Alabama, and confined in the jail at Huntsville, Alabama, in the county and State aforesaid, to be safely kept to answer for said crime, according to law, in the courts of the State of Alabama; and the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place aforesaid, and within the jurisdiction aforesaid, Robert Powell and Thomas Riggins, all of whom are white men, and whose Christian names are to the grand jurors otherwise unknown, well knowing that the said Horace Maples, a citizen of the United States and a person of African descent, and of color, was then and there in the lawful custody of Madison county, Alabama, and confined in the jail of Madison county, to answer for his crime according to law, did conspire, combine and confederate together and with divers other persons to the grand jurors unknown to have said Horace Maples taken from the said jail, and the custody of the said sheriff by lawless white persons and hung, on account of his race, and with the intent because of his race to prevent his
11 enjoyment of civil equality before the law with the white race as to a trial and right of trial by due process of law in the courts of the State of Alabama, as is enjoyed by white men under the laws of the State of Alabama, when accused of crime against its laws, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Fourth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: that at the time and place and within the jurisdiction aforesaid, in the county of Madison, and State of Alabama, the said Robert Powell and Thomas Riggins, whose Christian names are to the said grand jurors otherwise unknown, and divers other persons to the said grand jurors unknown, did conspire, combine and confederate together, to injure, oppress, threaten and intimidate one Horace Maples, a citizen of the United States, in the free and

full enjoyment of the right, privilege and immunity secured to him by the Constitution and laws of the United States, to-wit, the right, privilege and immunity to have the State of Alabama, acting by and through its officers, to afford him, the said Horace Maples, a citizen of the United States as aforesaid, a trial by due process of law upon accusation of crime preferred against him, when he, the said Horace Maples, was, as was then the fact, in the custody of the officers of the law of the State of Alabama, upon the charge of murder under the laws of said State, and was then and there being held by the officers of the said State of Alabama, in the county jail of the county of Madison and State of Alabama, for the purpose of affording him such trial, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Fifth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: that at the time and place, and within the jurisdiction aforesaid, in the said county of Madison, and State of Alabama, the said Robert Powell and Thomas Riggins, whose Christian names are to the said grand jurors otherwise unknown,
12 and with divers other persons to the said grand jurors unknown, did conspire, combine and confederate together, and with such other persons to the said grand jurors unknown to injure, oppress, threaten and intimidate one Horace Maples, a citizen of the United States and a person of African descent and of color, in the free and full enjoyment and exercise of a right, privilege and immunity secured to him by the Constitution and laws of the United States, on account of his race and color, to-wit: the right to the full and equal benefit of the laws of the State of Alabama, for the security of his person as is enjoyed and exercised by the white citizens thereof, and the right not to be deprived of his life without due process of law, on account of his being a citizen of African descent and of color, in this, to-wit: that he should be entitled to have, and should have a trial of any accusation, charge of crime, or indictment against him, and a determination and finding and judgment thereon of his guilt or innocence, by a court of competent jurisdiction, and by the verdict of a jury of his peers, which said right was accorded to every white citizen of the State of Alabama, and to the said Horace Maples, a citizen thereof, of African descent, and of color, by the laws of the said State of Alabama; and that the said Robert Powell and Thomas Riggins, and said other persons to said grand jurors unknown, did form said conspiracy and combination hereinbefore set forth and charged, for the purpose of injuring, oppressing, threatening and intimidating the said Horace Maples, who was then and there a citizen of the United States, in the free exercise and enjoyment of the right and privilege as aforesaid, and because and on account of his being a citizen of the United States of African descent, and on account of his color; and in the furtherance of the said con-

spiracy, so formed for the purpose aforesaid, and on account of the said Horace Maples being a citizen of the United States of African descent, and of color, and to effect the object of said conspiracy said Robert Powell and Thomas Riggins, and such other persons to the grand jurors unknown, did, on, to-wit: the 7th day of September, 1904, in the county of Madison, and State of Alabama, in the division of the district aforesaid and within the jurisdiction of said court, go upon the highway and streets of the city of Huntsville, in the county of
13 Madison aforesaid, and did then and there unlawfully, feloniously, wilfully, premeditatedly and with malice aforethought, kill and murder the said Horace Maples by hanging him by the neck, which said murder and killing was done on account of the said Horace Maples being a citizen of the United States of African descent and of color, and that the said unlawful killing of the said Horace Maples, with malice aforethought, as aforesaid, was done in order that he, the said Horace Maples, might be deprived of the full and equal benefit of the laws of the State of Alabama, for the security of his life and person, and of the full and equal benefit of the said laws not to be deprived of his said life without due process of law, on account of his being a citizen of African descent and of color, and that said unlawful killing as aforesaid, was done and committed to deprive the said Horace Maples of his right not to be deprived of his life without due process of law, which said process of law should consist of a trial of any accusation, charge of crime or indictment against him, and a determination, finding and judgment of his guilt or innocence thereof by a court of competent jurisdiction, and by the verdict of a jury of his peers, and such unlawful killing and murder as aforesaid of the said Horace Maples, was done because he, the said Horace Maples was a citizen of the United States of African descent and of color, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Sixth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place, and within the jurisdiction aforesaid, in the county of Madison, and State of Alabama, the said Robert Powell and Thomas Riggins, whose Christian names are to the said grand jurors otherwise unknown, and divers other persons to the said grand jurors unknown, did conspire, combine, and confederate together, and with such divers other persons to said grand jurors unknown, by force and violence to injure, oppress, threaten and intimidate one Horace Maples, who was then and there a citizen of the United States and a person of African descent and of color, in the free and full enjoyment and exercise of a right, privilege and immunity secured to him by the Consti-
14 tution and laws of the United States on account of his race and color, to-wit, the right to the full and equal benefit of the

laws of the State of Alabama, for the security of his person and life to the same extent as is enjoyed by the white citizens thereof, and the right not to be deprived of his life without due process of law, on account of his race and color, in this, to-wit: that he should have and be entitled to have a trial of and upon any accusation, charge of crime, or indictment against him, and a determination, finding and judgment of his guilt or innocence of the crime so charged against him, by a court of competent jurisdiction, and by the verdict of a jury of his peers, which said right was accorded by law to every white citizen of the State of Alabama, and to said Horace Maples, a citizen thereof, and of the United States, of African descent and of color, by the laws of the State of Alabama; and that the said Robert Powell and Thomas Riggins, and said other persons to said grand jurors unknown, did form said conspiracy and combination heretofore set forth and charged for the purpose of injuring, threatening oppressing and intimidating the said Horace Maples, who was then and there a citizen of the United States, in the free exercise and enjoyment of and to deprive him of, the right and privilege as aforesaid, and to deprive the said Horace Maples who was then and there confined in the county jail of Madison county, and State of Alabama, upon a charge of murder in the unlawful killing with malice aforethought, of one E. D. Waldrop, a white man, of due process of law in this, the said Maples having the said charge against him heard, tried and determined by a court of the State of Alabama, of competent jurisdiction, and by the verdict of a jury of his peers, because, and on account of the said Horace Maples being a citizen of the United States, of African descent and of color; and in furtherance of the said conspiracy and on account of his being charged with the killing of a white man, the said Robert Powell and Thomas Riggins and such other persons to the said grand jurors otherwise unknown, did, on to-wit, the 7th day of September 1904, in the county of Madison, and State of Alabama, in the division of the district aforesaid, and within the jurisdiction of this court go upon the highway and streets of the city of Huntsville, in the county of Madison, aforesaid, and did then and there unlawfully, feloniously, wilfully, premeditatedly and with malice aforethought kill and murder the said Horace Maples by hanging him by the neck, or by some other means to the said grand jurors unknown, on account of the said Horace Maples being a citizen of the United States, of African descent and of color, and that the said unlawful killing with malice aforethough as aforesaid, was done in order that the said Horace Maples might be denied the full and equal benefit of the laws of the State of Alabama, for the security of his life and person and the right not to be deprived of his life without due process of law, on assount of his being a citizen of the United States of African descent and of color, and said killing was done for the purpose of depriving said Horace Maples of his right to be protected and not to be deprived of his life without due process of law, which said due process of law should consist of a trial of any accusa-

tion, charge of crime or indictment against him, and of a termination finding and judgment of his guilt or innocence thereof by a court of competent jurisdiction, and by the verdict of a jury of his peers, and the said killing was done and the said Horace Maples was deprived of his life without due process of law by the parties above named so conspiring and combining as aforesaid, because the said Horace Maples was a citizen of the United States of African descent and of color, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

THOS. R. ROULHAC,
United States Attorney.

A true bill.
SAMUEL M. THOMPSON,
Foreman of the Grand Jury.

Endorsed: Filed in open court, October 24th, 1904, Chas. J. Allison, clerk United States courts.

16 UNITED STATES OF AMERICA,
Northern District of Alabama, Northern Division.

I, Charles J. Allison, clerk of the circuit court of the United States of America in and for said division of said district, do hereby certify that the foregoing is a true, full, and complete copy of the indictment filed in the case of The United States *vs.* Robert Powell and Thomas Riggins, made Exhibit "B" to the petition of Thomas Riggins, as fully as the same does appear of record and from the file in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at office in the city of Huntsville, in said district, this twenty-eighth day of October, 1904.

{Seal United States Circuit Court, Northern Division, Northern District of Alabama.}

CHAS. J. ALLISON,
Clerk of the U. S. Circuit Court.

17 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

THE UNITED STATES *vs.* THOMAS RIGGINS. } Order for Marshal to Bring Defendant into Court.

This day comes Thomas Riggins into open court, and files his sworn petition setting forth that he is detained by the marshal of this court by virtue of a capias issued from this court, upon

an indictment pending therein, which is set forth in said petition, and thereupon prays for a writ of *habeas corpus*.

On consideration thereof by the court, it is ordered that the marshal have the body of said Thomas Riggins before this court on Wednesday, the 26th day of October, 1904, at four o'clock, p. m., then and there to do and receive what shall be considered by the court in the premises and he is further directed to certify to the court the true cause of the detention of said Riggins.

This October 26, 1904.

THOS. G. JONES, Judge.

Filed in open court, October 26, 1904.
CHAS. J. ALLISON, Clerk.

18 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

THE UNITED STATES
vs.
THOMAS M. RIGGINS. } Writ of *Habeas Corpus*.

To D. N. Cooper, United States marshal:

Whereas, an order of court has been entered herein:—viz:—

"This day comes Thomas M. Riggins into open court, and files his sworn petition setting forth that he is detained by the marshal of this court by virtue of a capias issued from this court upon an indictment pending therein, which is set forth in said petition, and thereupon prays for a writ of *habeas corpus*.

Upon consideration thereof by the court, it is ordered that the marshal have the body of said Thomas M. Riggins before this court on Wednesday, the 26th day of October, 1904, at four o'clock p. m., then and there to do and receive what shall be considered by the court in the premises, and he is further directed to certify to the court the true cause of the detention of the said Riggins."

You are therefore hereby commanded to have the body of Thomas M. Riggins alleged to be detained by you, by whatever name the said Thomas M. Riggins is called or charged with the cause of such detention before our said circuit court on Wednesday, the 26th day of October, 1904, at four o'clock p. m., to do and receive what shall then and there be considered concerning the said Thomas M. Riggins.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this the 26th day of October, 1904.

{ Seal United States Circuit Court, Northern District of Alabama, Northern Division. }

CHAS. J. ALLISON,
Clerk U. S. Circuit Court.

Returned and filed, Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

19 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

THE UNITED STATES OF AMERICA
vs.
THOMAS RIGGINS and ROBERT Powell.
} Answer to Writ of *Habeas Corpus*.

In this cause comes Daniel N. Cooper, and for return to the writ of *habeas corpus* this day served upon him says:—

That he produces herewith and brings into court the body of the said Thomas Riggins, and hereby certifies that he holds and detains him the said Thomas Riggins under a capias issued from and by the circuit court of the United States for the northern division of the northern district of Alabama, under an indictment pending in said court; which said capias and indictment are correctly set forth in the petition filed by the said Thomas Riggins for the aforesaid writ of *habeas corpus*. Done and certified, this 26th day of October, 1904.

D. N. COOPER,
U. S. Marshal for Northern Dist. Alabama,
By W. A. GREENE,
Dep. U. S. Marshal.

Filed in open court Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

20 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

UNITED STATES
vs.
THOMAS M. RIGGINS.
} Order Denying Petition for *Habeas Corpus*.

This day came Thomas M. Riggins in open court, and presented his petition for a writ of *habeas corpus*, alleging that he is restrained of his liberty contrary to the Constitution and laws of the United States as more fully shown by his petition filed herein.

And thereupon, the court issued a writ as prayed for in said petition and thereafter and thereupon the marshal of said district produced the body of said Thomas M. Riggins in open court and made the return to the said writ, as set forth in the record of this cause.

Upon consideration, it is ordered, adjudged and decreed, by the court that the prayer of the petitioner be denied, and that the writ of *habeas corpus* be discharged and denied, and that petitioner be remanded to the custody of the United States marshal to be held under said indictment and capias until discharged by due process of law.

Thereupon the said Thomas M. Riggins in open court, filed his petition for an appeal from said order to the present term of the Supreme Court of the United States, which appeal was in open court, duly allowed. The district attorney of the United States for said district then and there being present representing the United States.

It is further ordered that the said defendant, Thomas M. Riggins, execute an appeal bond in the penal sum of two hundred and fifty dollars, payable and conditioned as by law provided, which said bond is now tendered in open court, and the same is now duly approved.

Done this 26th day of October, 1904.

THOS. G. JONES,
Judge Presiding.

Filed in open court, Oct. 26, 1904.
CHAS. J. ALLISON, Clerk.

21 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

THE UNITED STATES OF AMERICA
vs.
THOMAS RIGGINS and ROBERT POWELL. } Bill of Exceptions.

Be it remembered, that on this the 26th day of October, 1904, a day of the regular term of the said court, Thomas Riggins filed his petition for a writ of *habeas corpus* as appears from the record herein, and thereupon the marshal produced the body of said Riggins in open court as commanded by the writ issued in this cause, and made the return certified by him as appears from the record in this cause, and thereupon, petitioner offered in evidence the capias and indictment, the return of the marshal to the writ of *habeas corpus*, no other evidence being offered, the petitioner in open court moves the court to discharge the petitioner from custody or restraint under the said capias and indictment, on the ground that the indictment charges no offence against the laws of the United States, and also that this court had no jurisdiction under the Constitution and laws of the United States, of the alleged offence set forth in said indictment, or in any of the counts thereof: and thereupon, after argument, the court being of opinion that the indictment is valid and charges offences against the laws of the United States, which this court has jurisdiction to hear and determine, denied said motion, and remanded the prisoner to the custody of the marshal, and discharged the said writ, and to these orders the petitioner separately and duly excepted in open court.

Wherefore petitioner tenders this as his bill of exceptions which he prays may be signed and sealed as such, and made a part of the

record in this cause, which is accordingly done and allowed by the presiding judge of this court, in open court, this 26th day of October, 1904.

THOS. G. JONES,
U. S. Judge, Northern District of Alabama, Presiding in and over the Circuit Court of the U. S. for the Northern District at its Present Session.

Filed in open court, Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

22 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

UNITED STATES
vs.
THOMAS M. RIGGINS. } Appeal Bond.

Know all men by these presents: That we, Thomas M. Riggins, J. P. Powell and F. S. Bennett, of the county of Madison, State of Alabama, are held and firmly bound unto the United States of America, in thr sum of two hundred and fifty dollars, to be paid the *the* said United States of America, for the payment — well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals, and dated this 26th day of October, 1904.

Whereas, the above named Thomas M. Riggins has prosecuted an appeal to the present term of the Supreme Court of the United States to reverse the order rendered in the above entitled cause on the 26th day of October, 1904, by the circuit court of the United States for the northern division of the northern district of Alabama;

Now therefore, the condition of this obligation is such that if the above named Thomas M. Riggins shall prosecute said appeal to effect, and answer all damages and costs, and if he fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

T. M. RIGGINS. [SEAL.]
J. P. POWELL. [SEAL.]
F. S. BENNETT. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 26th day of October, 1904.

Approved this 26th day of Octo. 1904.

THOS. G. JONES,
U. S. Dist. Judge, Presiding in and Holding Circuit Court.

Filed in open court, Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

23 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

UNITED STATES
vs.
THOMAS M. RIGGINS. } Petition for Appeal.

To the honorable the judge of said court:

Your petitioner, Thomas M. Riggins, conceiving himself aggrieved by the order entered in this court on the 26th day of October, 1904, denying petitioner the writ of *habeas corpus* filed by him in this cause, doth hereby appeal from said order, to the Supreme Court of the United States, and he prays that this his appeal may be allowed, and he hereby presents assignments of error in said cause; and that a transcript of the record and proceedings herein by which said order was made, duly authenticated, may be sent to the Supreme Court of the United States at the present term thereof as by the rules of said court in such cases made and provided.

T. M. RIGGINS.

Filed in clerk's office, Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

24 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

UNITED STATES
vs.
THOMAS M. RIGGINS. } Assignments of Error.

The defendant petitioner, Thomas M. Riggins, in connection with his petition for an appeal, makes the following assignments of error in the ruling of this court,

1. The court erred in refusing to grant the prayer of said petition.
2. The court erred in refusing to discharge the petitioner, and in remanding him to the custody of the marshal.
3. The court erred in not determining as a matter of law that the indictment,—a certified copy of which is annexed to the petition,—charged no offence punishable under the laws of the United States.
4. The court erred in determining that the said indictment, charging this defendant with a conspiracy or combination to injure, threaten and oppress one Horace Maples, a citizen of the United States, of African descent and color, in denying the said Horace Maples a trial by jury, charges an offence, which is punishable under the laws of the United States.
5. The court erred in refusing to hold that the said indictment charging this defendant with a conspiracy to injure, threaten and

oppress Horace Maples, a citizen of the United States, of African descent and color, in denying him a trial by jury, upon an indictment for murder in the courts of Alabama, by hanging him, did not charge any offence cognizable by the courts of the United States, or punishable under the laws of the United States.

6. The court erred in holding that said indictment charging this defendant, together with one Robert Powell and others, with entering into a conspiracy to injure, threaten or oppress Horace Maples, a citizen of the United States, of African descent and color, in denying to the said Horace Maples, by reason of his race, a trial by jury, upon an indictment in the courts of Alabama, under an indictment for murder, whereby his guilt or innocence might be determined, constituted an offence within the jurisdiction of the courts of the United States, or punishable under the laws of the United States.

7. The court erred in holding that the facts set forth in said indictment, charged an offence within the jurisdiction of the courts of the United States, and punishable under the laws of the United States.

8. The court erred in refusing to hold that the facts set forth in said indictment, and in each count thereof, charged an offence punishable only in the courts of the State of Alabama.

COOPER & FOSTER,
Attorneys for Defendant.

Filed in clerk's office, Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

THE UNITED STATES
vs.
THOMAS M. RIGGINS. } Opinion. *Ex Parte* Riggins.

JONES, District Judge:

Whether or not Maples, a negro citizen, had the right, privilege or immunity under the Constitution and laws of the United States to be free from lawless violence at the hands of white men, intended on account of his race to prevent his enjoyment of civil equality before the law, "as is enjoyed by white citizens," depends upon the proper construction of the XIIIth amendment and valid legislation under it.

In the Civil Rights cases, 109 U.S. 20 —, the Supreme Court said that the XIIIth amendment "is undoubtedly self-executing, and by its own unaided force and effect abolished slavery and established universal freedom." It was further said, that "it authorized legislation for the protection of the freedom it intended to secure, which might be direct and primary in its nature, operating upon the acts of individuals, whether sanctioned by legislation or not. In *Ex parte* Virginia, 100 U. S., 304, speaking of the XIIIth amendment, as well as of the

XIVth and XVth amendments, the court said, "One great purpose of these amendments was to raise the colored race from that condition of inferiority and servitude in which most of them had previously stood, into perfect equality of civil rights with all other persons within the jurisdiction of the State." It is further said of the XIIIth amendment, as well as the others, in the Slaughter House cases, 16 Wallace, 71: "One pervading purpose found in them all, and lying at the foundation of each, and without which none of them would have been even suggested, was the freedom of the slave race, and the security and firm establishment of that freedom, and protection of the rights of the newly made freeman and citizen from the oppression of those who had previously exercised unlimited dominion over them." The condition of affairs existing in some of the States shortly after the adoption of the amendment, as stated in the Slaughter House cases, 16 Wallace, 7, resulted in the passage of an act on April 9, 1866, commonly known as the civil rights bill, entitled "An act to protect all persons in their civil rights and
27 furnish the means of their vindication." The first section, codified as section 1977 of the Revised Statutes, was readopted in substance after the adoption of the XIVth amendment. That section provides that "all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, penalties, licenses, taxes and to exactions of every kind, and to no other." If the XIIIth amendment, as the Supreme Court declares, "by its own unaided force abolished slavery and established freedom" and Congress was expressly vested with power to enforce it, it is impossible, in the light of its known history and purpose and the decisions cited above, to doubt that Congress had authority to pass the first section of that act. Mr. Justice Swayne, in United States, *v.* Rhodes, 1 Abbott, 28, held that the "emancipation of one who was a native born slave, by removing the disability of slavery, made him a citizen without any further act of Congress." Mr. Justice Bradley, in United States *v.* Cruikshank, 1 Woods' Rep., 308, said, "As the disability to be a citizen and enjoy equal rights were deemed one form or badge of servitude, it was supposed that Congress had the power under the amendment to settle this point of doubt, and place the other race on the same plane of privilege as that occupied by the white race. Conceding this to be true, which I think it is, Congress then had the right to go further, and to enforce its declaration by passing laws for the prosecution and punishment of those who should deprive or attempt to deprive any person of the rights thus conferred upon him. Without having this power, Congress could not enforce the amendment. It cannot be doubted, therefore, that Congress had the power to make it a penal offense to conspire to deprive a person, or to hinder him in the exercise and enjoyment of rights and privileges con-

ferred by the XIIIth amendment, and the laws thus passed in pursuance thereof.

To constitute the offense, therefore, of which courts of the United States have the right to take cognizance under the amendment, there must be the design to injure a person or deprive him of
28 the equal right of enjoying the protection of the laws, by reason of his race, color, previous condition of servitude." The views of Mr. Justice Bradley and Mr. Justice Swayne in the cases cited, as to the power of Congress to protect the freedom given by the amendment and of what it consisted, were approved by the Supreme Court of the United States in Harris v. The United States, 106 U. S., 629. See also what is said of Cruikshank's case in this regard in Logan v. United States, 144 U. S., 288. The character of the freedom intended to be conferred and enjoyed was symbolized, in the minds of the framers of the constitutional amendment, and the legislation intended to accomplish its purpose, by the civil rights enjoyed by the dominant race; or to quote the language of that section, "as is enjoyed by white citizens." This civil equality must not be confounded with social or political rights. As this was the standard of the freedom conferred and the measure of the rights which constituted that freedom, and as the purpose of the legislation, under the amendment, was to secure and protect the former slave race from the aggressions of the master race, it is quite clear that the right to be free from attacks by members of one race, designed and intended to prevent the other race from enjoying the civil rights which go to make up that freedom, is a right, privilege or immunity "accorded by, or arising under, or dependent upon the Constitution" and that such rights may be protected by Congress—Cruikshank v. United States, 1 Woods' Reports, 303; United States v. Rhodes, 1 Abbott, 28; Civil Rights cases, 109 U. S., 23; United States v. Morris, 125 Fed. Rep. 322.

Whatever may be said of any other murder of a negro by white men, it is undeniable when a negro is taken by white men from the custody of the State authorities, when he is being held for trial on accusation of crime against State laws, and put to death to prevent his having such trial, because of race hostility, that the manifest result, as well as intent of such act, is to deprive him, because of his race, of the enjoyment of the civil rights accorded by law to white freeman. Such an act, perpetrated in that manner, and with that intent, because of race malevolence, assails the negroe's civil equality because of his race, and by denying the enjoyment of
29 that right with that motive, attacks the enjoyment of the freedom, the civil equality, which the amendment and legislation under it secures to him.

II. It is said of the counts based upon violation of rights or privileges claimed under the XIV amendment, that no complaint is made of the laws of the State, or of, the modes of enforcing them, but that, on the contrary, it is shown the State was without fault, and that its

civil and military power was overwhelmed, while the State was endeavoring to protect Maples from the mob, in order to afford him a trial by due process of law; and this being so, it is insisted that a case is presented in which the United States has no power to legislate for the punishment of the offenders in any aspect in which the matter may be viewed. The fact that the State was without fault and endeavoring to do its duty, is not, however, at all conclusive of power of Congress to legislate under that amendment, and is material only in determining the channels in which that power may be exercised.

The duty of affording due process of law to all persons was an original duty of the State, and prior to the XIVth amendment was not a matter of concern to the General Government. That amendment made the performance of the duty by the State a matter of national concern; and if need be of national supervision. It was not the intention of the States in adopting this amendment to confer power upon the General Government to undertake the general or initial duty of affording due process of law. The purpose was that the State should continue to administer justice, and punish crime, but subject to the authority conferred by the XIVth amendment upon Congress. When, therefore, the amendment contemplates that the State should continue to discharge the duty, and forbade the States in the performance of it to deny due process, the prohibition *ipso facto*, inevitably, became nothing more or less than a positive command that the States shall afford due process to all persons, and certainly to all citizens. It resulted from the judicial power of the United States that the Supreme Court became the final arbiter of what constituted due process of law, and the equal protection of the law; yet, the main purpose of the amendment was to increase the power of Congress. It is Congress to which is given the power "to enforce" the duty by appropriate legislation. *Ex parte* Virginia, 100 U. S. S., 345. The Supreme Court has declared of these provision- that "they are to some extent declaratory of rights, and though in form prohibitions, they imply immunities such as may be protected by congressional legislation." The power of Congress under the amendment, as to the performance of the duty thus enjoined upon the State, has therefore a twofold aspect. The first concerns the right to interfere with State laws or State power. That can be done only when the State is at fault, when the State either refuses to afford due process of law, or its officers refuse to execute the laws, or execute them with vicious purpose or uneven hand. Then, and not until then, can Federal power step in and displace or alter State laws, or interfere with State officers. Then, the interference with State law or power must be confined to dealing with the particular evil and to providing an effective cure for it. The other phase of the power concerns the protection of the rights which the amendment gives, though the State may not be at fault, and also the power of Congress to aid the State, in the performance of its duty, by removing obstruction or resistance by private lawlessness, to the successful performance of the duty.

The vital purpose of the amendment in imposing the duty upon the State under this clause, is not merely to secure formal recognition of the right in the constitution and laws of the State, and provisions to enforce them, which, unless they are enforced, amount only to parchment due process of law; but, that the duty should be so performed that it will result not merely in having proper laws and officers, but in the full enjoyment of the benefits of the operation of due process of law, in individual cases. When a private individual takes a person charged with crime from the custody of the State authorities, to prevent the State from affording him due process of law, and puts him to death to punish the crime and to prevent the enjoyment of such right, it is violent usurpation and exercise, in the particular case, of the very function which the Constitution of the United States itself, under this clause, directs the State to perform in the interest of the citizen. Such
31 lawlessness differs from ordinary kidnapping and murder, in that the dominant intent and actual result is usurpation and exercise by private individuals of the sovereign functions of administering justice and punishing crime, in order to defeat the performance of duties required of the State by the supreme law of the land. The inevitable effect of such lawlessness is not merely to prevent the State from performing its duty, but to deprive the accused of all enjoyment, or opportunity of enjoyment of rights, which this clause of the Constitution intended to work out for him by the actual performance by the State of all the things included in affording due process of law, which enjoyment can be worked out in no other way, in his individual case. Such lawlessness defeats the performance of the State's duty and the opportunity of the citizen to have the benefit of it, quite as effectually and far more frequently than vicious laws, or the partiality or the inefficiency of State officers in the discharge of their constitutional duty. It is a great, notorious, and growing evil, which directly attacks the purpose which the Constitution of the United States had in view when it enjoined the duty upon the State.

Upon what principle, then, can it be said that because the State is not at fault, that the power given Congress by this amendment is thereby rendered futile, and that it can not exercise even the incidental power of removing lawless resistance to the State's performance of this duty in order to protect the right, when the exercise of the power by Congress does not displace State laws or interfere with State officers? Such legislation is certainly "appropriate" in the sense that it is adapted to carry out the purposes of the amendment, and certainly directly aids its accomplishment. If it can be criticised as not being "appropriate," it can only be in the sense that it is in excess of authority. The objection, therefore, comes to this, that Congress has no power, in any event, although it confines its legislation to removing obstacles and resistance in the pathway of the State in the discharge of its duty, which subvert the purposes of the amendment and defeat the enjoy-

ment of the rights sought to be secured by the performance of
32 the duty enjoined. If we regard the rule that "when the end is required, the means are given," Prigg, v. Pennsylvania, 16 Peters, 539; Legal Tender cases, 12 Wallace, 536; the Legal Tender case, 110 U. S., 492; the right of Congress to legislate against such acts of private individuals is plainly implied in the power given to enforce the amendment. Section 5508 of the Revised Statutes as applied to such a case can be sustained under that power; for its application deals only with acts that subvert the performance of the duty, without in any way interfering with or touching the power of the State or its laws.

If, however, such power is not implied in that amendment, it is certainly not prohibited by it, and may be exercised by Congress if it can be found in any other provision of the Constitution. It is stated by Mr. Justice Strong, in delivering the opinion of the court in the Legal Tender cases, 12 Wallace, 536, that "the existence of a power may be deduced from one or more of the substantive powers expressed or defined, or from them all combined, and that it is allowable to group any number of them, and infer from them all that the power has been conferred." It was also declared in the same case that a "power may exist as an aid to the execution of an express power, or the aggregate of such powers, though there is another express power given relating to the same subject, but less extensive." 12 Wallace, 536. The last clause of section 8, article I, empowers Congress to make all laws which shall be "necessary and proper," for carrying into execution the "foregoing powers and all other powers vested by this Constitution in the Government of the United States, or any department thereof." The Supreme Court has held that the amendment is an "additional guaranty" for the enforcement of due process of law at the hands of the State, and that the power was conferred upon Congress to see that the duty guaranteed was performed. Certainly, if the legislative power to guaranty the performance of the duty is vested in Congress by the XIVth amendment itself, Congress has power under section 8 of article I to pass all laws which shall be "necessary and proper" to carry into execution that guaranty. The legislative power to make good the guaranty, involves the power to protect State officers when
33 endeavoring to discharge the constitutional duty, and to punish private individuals who resist the execution of the laws, by whose enforcement alone the duty can be accomplished, and the rights, privileges and immunities enjoyed, which the amendment intended to bestow, when it required the performance of the duty at the hands of the State.

The principle upon which such legislation is vindicated, is illustrated and upheld in *Ex parte* Siebold, 100 U.S., 372. In that case, laws of the United States were involved which imposed penalties upon State officers for not performing their duty as commanded by State law, so far as it affected the election of Congressmen and presidential electors. The court held that the duties to be performed

were "due to the United States, as well as to the State," and that Congress could rightly make such violation of State laws an offense against the United States. It was said,—this power necessarily followed from "the direct interest" which the National Government had in the subject. The National Government having a direct interest in the performance of the duty here, can protect officers who are charged with it. The right to protect the officer in discharge of the duty, involves the power to punish private individuals who assail the officer to prevent his performing it. The General Government, certainly, has as direct and deep an interest in securing the successful performance of the duty to furnish due process of law, which is required of the State to secure the enjoyment of fundamental rights of citizens of the United States, as it has in the performance of duties by State officers under the State law, affecting the election of Congressmen and presidential electors. It has also been held in numerous cases that the function which a party is performing, determines whether Congress has the right to protect him in performing a duty enjoined or in the exercise of a right or privilege. A State officer in attempting to afford due process in a particular case is discharging a duty imposed upon him, as the representative of the State, by the Constitution of the United States, for the benefit of its citizens. The prisoner also, while confined and being protected against lawless violence, that he may have a trial according to the law of the land, is in the exercise or enjoyment of a right given him by the Constitution. Con-
34 gress may protect the performance of the duty and the rights which flow from it, by declaring that violations of State laws on the subject, constitute offenses against the United States. *Ex parte* Siebold, *supra*. Indeed, whether an act constitutes an offense against the United States, as well as the State, very frequently turns upon the intent with which it is done. United States, *v.* Cruikshank, 1 Woods' Reports, 308; United States, *v.* Waddell, 112 U. S., 80. Congress, instead of making violation of State laws which protect the right a substantive offense under the Federal law, may strike at the evil effect of private lawlessness upon the right, and punish conspiracies to prevent enjoyment of the right, and in that connection acts done to carry it out. Sections 5508 and 5509 of the Revised Statutes are framed upon this latter principle.

It is nothing new in our jurisprudence for Congress to legislate against lawless acts of private individuals, to aid and protect State officers in the performance of duties which the Constitution of the United States requires of them, although such duty is due only to the public, or Government, and not directly due to any particular individual, and although the provisions of the Constitution imposing the particular duty give Congress no power to coerce or supervise its performance. Under the Constitution, Congress is without power to compel the State to which the fugitive from justice has fled, to surrender him upon the "demand of the governor" of the State from which the accused fled. This is only a moral duty ad-

dressed to the conscience of the State; yet, when the State undertakes to obey the Constitution, and enters upon the performance of the constitutional duty, Congress steps in and punishes individuals who interfere with the agents of the State in the discharge of that duty. For more than a century, there has been a statute, now codified as section 5279 of the Revised Statutes of the United States, constitutionality of which has never been doubted, which puts a penalty upon persons who interfere with the agents of the demanding State, though, in the language of the Supreme Court, "they are the mere agents of the State, with authority to receive the fugitive from justice." Robb *v.* Connolly, 111 U. S. 634. What difference is there in principle between legislation of Congress which punishes private individuals who rescue a fugitive from justice, in the custody of the agent of the demanding State, to prevent the fugitive's return, as required by the Constitution, and legislation which punishes private persons who take a prisoner from the custody of State officers, who are holding him to give him a trial by due process of law on accusation of crime, and murder such prisoner to prevent the performance of the duty, which, under the Constitution is "due to the United States as well as to the State," and as well, also, to the citizen?

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No one can deny that the XIVth amendment conferred upon the citizen the right, privilege or immunity to have his State afford him due process of law, on accusation of crime against him, and that a right or privilege was thereby vested in the citizen under the Constitution of the United States, to have the State perform this duty.

The very words of this clause, by their own unaided force, inevitable give a command that the State shall afford due process to the citizen. It is, therefore, a right, privilege or immunity of a citizen of the United States to have the State afford him due process of law. It is an universal rule of law and common sense as well, that the grant of a right or privilege, carries with it every right or privilege necessary to the enjoyment of the right granted, unless withheld by the terms of the grant. The grant here makes no such exception. The constitutional right of the citizen cannot bear fruit, or ripen into the enjoyment of due process at the hands of the State, if lawless outsiders prevent State officers from performing their duty concerning it. The right, privilege or immunity of a citizen of the United States, under this clause, which is to have his State give him the benefit of due process of law, therefore, necessarily carries with it, and includes in it, the right, privilege or immunity to enjoy freedom, exemption, from lawless assault, which supervenes between the State and the performance of its duty, and by such violent interference prevents the citizen having, when the State is endeavoring to afford it, due process at the hands of the State.

There is no valid legislation of Congress which protects the enjoyment of this right by criminal penalties, except section 5508 of the Revised Statutes. That statute does not define the right or privilege here considered, or particularize the

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rights it is designed to protect, but is directed to the punishment of conspiracies to deprive any citizen of the enjoyment of any right or privilege "secured to him by the Constitution or laws of the United States." In considering its application to this case, we must be careful not to overlook what part of the right or privilege is involved and remains to be guarded, when the State is endeavoring to afford due process of law, and is assailed to prevent it from doing so, by private individuals. The privilege or immunity then, is the right or privilege to freedom, or exemption, from lawless attacks on the discharge of the duty by the State, which prevent the State, acting through its officers, from administering due process, and thereby frustrate the citizen's enjoyment of the protection, which the Constitution intended to effect for him, when it gave him the immunity or right to have due process of law at the hands of the State. When the State is endeavoring to do its duty, such lawlessness is the only means by which the enjoyment of the right or privilege can be breached. It is the attack upon the endeavor of the State to perform the duty, and not the crime committed under the State laws against the person of the citizen, which determines whether the enjoyment of the right has been assailed, or the State has been prevented from dispensing due process of law to the citizens in the constitutional sense. The wheels of justice must be stopped by unauthorized force after they have been put in motion, to bring the offender in a case like this, within the grasp of section 5508.

The State, in the first instance, discharges its full constitutional duty, under this clause, of affording due process to every person in the jurisdiction, by passing proper laws for the protection of rights of person and property, and giving proper means of enforcing them. After doing that, it cannot be lacking in the duty of affording due process to any person, as to any wrong to person or property, until the nature of the case calls for the further administration of
37 due process, which constitutes the second stage of the duty and in the particular case. Then, the duty of affording due process, which in its first stage involved only the exercise of legislative power, in passing laws, or of executive power, when the appointment of officers is put upon the executive, may involve the administration of judicial process in the particular case. So far as the duty of affording due process depends upon legislation, it is a general duty owed alike to everybody, and the right is given and the duty discharged, and the privilege enjoyed, so long as such laws remain in force, and are fairly executed. The second stage of affording due process, includes the obligation in many instances to administer judicial procedure in the individual case, and is due to a particular person. The State cannot be said to be prevented from performing the duty of affording due process, where it involves the necessity of administering judicial procedure, unless, after the occasion has arisen for judicial proceedings, the State has been overawed from attempting the duty, or having begun the performance of it, is subsequently compelled to abandon it. Before the State can be said to

have been prevented from discharging the duty of affording due process, where it involves the administration of judicial procedure, some proceeding must have been begun, in some tribunal, regarding the citizen or person, in which some right is asserted against him, or claimed by him, which the State, through its officers, is attempting to afford, and they must have been directly prevented by lawless resistance to their efforts from continuing the effort to administer justice in that case. Hence, when a person is murdered, although his life has been taken in violation of law, and in that sense, he has been taken off without due process, the State cannot be said thereto to have been prevented from discharging the duty of affording him due process of law, in the constitutional sense, unless such citizen was in the custody of the authorities of the State for violation of its laws, or some proceeding was being actually attempted or carried on in the courts, for the adjudication and enforcement of some right in which he was concerned, wherein the State was prevented from adjudging and enforcing the right, through judicial procedure, by direct attack made upon its officers, frustrating their endeavors to perform their duties. It is, we
38 repeat, resistance to the efforts of the State's officers to perform their duty, preventing them from doing the things which the law requires them to do, which defeats the State's discharge of the duty of rendering due process of law, and thereby assaults the enjoyment of the privilege or immunity of the citizen to have due process at the hands of the State. The right of the citizen to have the duty performed, which Congress is given power to enforce, necessarily carries with it the right to have protection against lawless acts of outsiders, which prevent the State from giving the citizen the benefit of due process of law. The right being given, and duty being put upon Congress to protect it, the duty to protect carries with it, even in the absence of special authorization, the power of protecting the enjoyment of the right, and authorize- Congress to adopt any legitimate means which is best adapted to attain the object. As said in Prigg *v.* Commonwealth, *supra*, "the fundamental principle applicable to all cases of this sort, would seem to be that when the end is required, the means are given; when the duty is enjoined, the ability to perform it is contemplated to exist in the functionary to whom it is entrusted." As the thing which the statute punishes here, is the attack upon the prisoner's right to have judicial procedure administered at the hands of the State and the resistance to the State's effort to afford the enjoyment of the citizen's privilege or immunity rights dependent upon or secured by the Constitution of the United States, there is no force whatever in the suggestion that the principle which justifies the application of section 5508 to this case, involves power in Congress to punish ordinary murder, or other mere trespass upon person or property, or invades the domain of State power in any way. United States *v.* Moore, 129 Fed., 643.

III. The precise question here was not mooted in either the civil

rights cases or in Harris *v.* United States, nor was its decision necessary to the judgment in those cases. The Harris case involved nothing under the XIVth amendment, except the inquiry whether private individuals could deprive a citizen of the enjoyment of the "equal protection of the laws" in the constitutional sense, and whether Congress had power to pass laws which constitute the
39 legal system in which consists the equal protection of the laws. The civil rights cases involved the power of Congress to secure rights claimed under the recent amendments, by general legislation, "which steps in the domain of local jurisprudence, and lays down rules for the conduct of individuals in society to each other," without reference to State laws or State action, concerning equal accommodations on carriers, at inns and places of public entertainment. It was decided that the privilege or right to such accommodation was not given or secured by the XIIIth amendment. The court declined to decide whether it was given or secured by the XIVth amendment, contenting itself with holding that the interference by the particular statute with State laws went beyond the limits of the evil to be remedied, which alone authorized Federal interference, and was, therefore, not "appropriate." It was the plenary power of Congress over State laws and State officers, when the State was not at fault, and not auxiliary power of Congress or its right to punish individuals who prevent the enjoyment of a right secured to the citizen under the Constitution and laws of the United States, which was there involved and decided. Cohens, *v.* Virginia, 6 Wheaton, 399.

IV. This opinion might well stop here; but in view of the great importance of the subject, the fullest discussion can not be out of place. It is, therefore, proper to inquire further what difference there is in the constitutional sense, between the nature and sweep of the rights, privileges or immunities flowing from the two clauses concerning "the equal protection of the laws" and "due process of law."

The equal protection clause makes but one demand upon the State and gives the citizen a single right only. It is that the State must make and execute its laws fairly and impartially. It must not grant rights to one which, under similar circumstances, it denies to another. This command is fully obeyed when the State passes impartial laws and provides proper officers to execute them, and they endeavor to do so. The constitutional command is only that the State create and enforce a legal status. When that status is created and the State's officers endeavor to maintain it, the State, under this clause,
40 has done its full duty to the citizen. The citizen is thereby put in full possession and actual enjoyment of the right the Constitution confers upon him. No act of a private citizen can defeat the enjoyment of this status, since it can be created only by the exercise of legislative power, and impaired only by acts of officers, those who wield State authority, by refusing to enforce these laws, or enforcing them with uneven hand or vicious purpose. State

power, which a private citizen does not possess, and cannot wield, alone can impair the enjoyment of the right. When the State, including therein officers who wield its power, has done its duty, the system of the State, the laws for the prevention and punishment of wrongs and enforcement and vindication of rights, in which consists the thing, which constitutes "the equal protection of the laws," is wholly and entirely the creation of the State, deriving its origin and force solely from the power of the State. The State may grant what it pleases, and withhold what it pleases, doing so impartially; for this clause neither commands the State to give any particular right or forbids it to withhold any particular right. Whatever is actually given is a gift of the State, in no wise secured by or dependent upon the Constitution of the United States. Whether these laws are obeyed or resisted, by private individuals, it amounts to nothing more than loyalty or disloyalty to State authority. The resistance to these laws by private individuals can not blot out the fact that the State has passed proper laws and appointed proper officers to execute them and thereby afforded "the equal protection of the laws,"—the status the Constitution commanded it to confer upon the citizen—and that in consequence he has full enjoyment of the right or status.

On the other hand, how is it with the right, privilege, or immunity, flowing from the right of the citizen to have the State afford him due process? Is it dependent wholly upon State laws? Can not its enjoyment be defeated, in the constitutional sense, by the act of private individuals, although neither the State laws nor officers are at fault?

The general duty of the State to afford due process of law to all persons is discharged, in the first instance, as we have seen, by the passage of proper legislation, and providing proper modes for
41 securing the enjoyment of life, liberty, property and the pursuit of happiness. This, however, is in no wise true of another phase of the duty, such as arises here, when the right to have due process at the hands of the State involves the enjoyment of the due administration of judicial procedure. When that is the case, there are many things which the State and its officers must do, or cause to be done, and in individual cases, by physical and mental work as distinguished from the exercise of legislative or political power, before the citizen can have the enjoyment at the hands of the State of due process of law. When the State seeks to punish the citizen for crime, it must not only give the person a right to appear before a lawful tribunal, but it must afford the opportunity as well Having put the accused in jail, it must keep him safely and bring him before that tribunal. When it brings him there, it must bring his witnesses there, if they will not come. In Alabama, it must confront him with a panel of his peers, from among whom he and the State elect a jury. A judge must be there to give the jury the law, and the prisoner may except and appeal, if dissatisfied with his rulings. The judge and jury must hear counsel in the prisoner's

defense. Then, the State must cause the jury to retire, where they will be guarded from outside influence, while they deliberate upon the guilt or innocence of the defendant, and then come again in court in the prisoner's presence, and return a verdict. The prisoner, if dissatisfied may poll the jury. He has the right to present whatever he can to the judge before sentence is pronounced, if found guilty, and then to have execution of the sentence suspended, until his appeal to the supreme court can be heard.

It is not clear that private individuals who overpower State officers, when they are endeavoring to protect a prisoner accused of crime, whom they have confined to the end that both he and the State may exercise their respective functions and rights before a judicial tribunal, and wrest the prisoner from their custody, and then murder him to punish him for the crime, do, in the constitutional sense, as well as in every other sense, deprive the prisoner of the enjoyment of due process at the hands of the State and prevent the State from affording it? No one can deny, that
42 under the Constitution, it is the prisoner's right to enjoy the workings of such due process, and that it is the duty of the State under the XIVth amendment to dispense such justice to him. These rights cannot be enjoyed, or the duty enjoined upon the State discharged, except from the undisturbed working of the machinery of justice after its power has once been put in motion until the period arrives in the particular case where it may rightly stop. Until it has done its perfect work, the administration of due process, which, in a case like this can not be enjoyed except by the regular and orderly working of judicial procedure, is not afforded by the State.

It can not be contended with any foundation in reason, that the right, privilege or immunity of the accused, to have due process at the hands of the State, is neither derived from or secured by the Constitution of the United States. The phrase "due process" has had a well defined meaning for ages. It has been previously employed in the Vth amendment. Putting it in the XIVth amendment not only granted, but directly defined certain specific rights, which enure to the benefit of every person, alien as well as citizen, and are "derived from, dependent upon, or secured by the Constitution of the United States." The right thus created and defined, in a case like this, involving life and liberty, is the right to enjoy the benefits of all proceedings which constitute a trial according to "the law of the land." But it cuts deeper than this. The law of the land, applying to all persons impartially, might not afford some of the rights which this clause of the Constitution grants, and secures to the citizen, and compels the State to afford. If, for instance, the State should deprive a person of the benefit of counsel, it would not be due process of law. If it allowed a private person to pass judgment on him for crime, it would not be due process. Within certain limits the State may change its remedies at pleasure, but it must be "with due regard to the land marks established for the protection of the citizen." It must not exercise "arbitrary power, or de-

part from the principles of private right and distributive justice." As declared by the Supreme Court, the XIVth amendment, in its requisition concerning due process, "is not too vague and in-
43 definite to operate as a practical restraint." Hurtado *v.* California, 110 U. S., 516. As there declared, "due process must, in the language of Mr. Webster, be according to his familiar definition, the general law, or law which hears before it condemns, and which proceeds upon inquiry and renders judgment."

The amendment, then, compels the State to provide impartial laws, lawful tribunals, in which to enforce them, which proceed upon fixed principles, and not arbitrarily, before which the accused has the opportunity as well as the right to appear, offer evidence, examine his accusers, and defend himself, and then to be punished or freed by that tribunal, as in its opinion he merits. Nothing less than this will satisfy the Constitution. All this it gives or secures. The circumstance that such rights are recognized or given in the constitution or laws of the State, does not take away any right the constitution gives concerning them, or make them any the less secured by or dependent upon the Constitution of the United States. Vincennes University, *v.* State of Indiana, 14 Howard, 277. Nor, is their constitutional consequence, in this respect, changed in any way, because the State in the exercise of its power in other respects over the right, confers other rights or remedies which, under its jurisdiction, go to make up "its established course of judicial procedure," which things the Constitution of the United States, by force of this provision, also compels the State to afford. The vital, constituent elements of the right, we repeat, are created or secured by the Constitution of the United States. The State may give more, but it cannot give any less. It is apparent, therefore, that there is a marked difference in the sweep of the rights, privileges or immunities which flow respectively from these two clauses. Under the first, when there is no improper discrimination, all that is given is the bounty of the State, and it may contract, or expand, or deny rights at pleasure. The system which constitutes the equal protection of the law is then wholly the creature of the State. As the things forbidden under the equal protection clause can be effected only by State power, it is impossible, in the nature of things, for a private citizen to impair the citizen's enjoyment of the right. Under the due process
44 clause, the vital essence of the grant, and of what it shall consist, flows from the Constitution of the United States itself. It is beyond the power of the State in any way to withhold, alter or impair them. From the very nature of the right, whenever the administration of due process involves the administration of judicial procedure, the State must not only pass fair laws, but through its officers, must do, or cause to be done, certain physical and mental acts in individual cases, which operate directly upon a particular individual, the benefits of which he cannot enjoy unless the officers of the State are permitted to perform them, or cause them to be performed, according to the established course of judicial procedure,

when he is present and asserting his rights. Undoubtedly then, private persons may defeat enjoyment, in the constitutional sense, of the right, privilege or immunity of the citizen to have the State afford him due process of law in many cases.

V. This class of cases presents, perhaps, the only instance in which Congress has power to protect rights of the citizen under the XIVth amendment, by punishing acts of private individuals which defeat the enjoyment of such rights, when the State is not at fault. The power of Congress rests upon and is vindicated by the consideration that the Constitution commands the State to perform a duty for the benefit of the citizen, thereby creating a constitutional right in that citizen to have the State do that thing for him, and that the resistance to the State's efforts to perform the duty frustrates obedience to the mandate of the Constitution, and thus directly cuts from under the citizen all opportunity to enjoy a right, which can be saved in no other way than by performance of the duty by the State. The prohibition put upon the power of the State to deny due process in the administration of justice, certainly creates a right in the citizen. The Constitution makes it a matter of national concern that the States perform the duty of affording due process. This much, at least, arises from the very letter of the amendment. The power given Congress to see that the State performs the duty, naturally includes power to remove obstacles which prevent the State's performing the duty. Has it no power to do so? Must the spirit of the amendment be sacrificed to the letter? What is the spirit of the amendment? It goes to this extent, at least, that the citizen, when the State undertakes to enforce rights of individuals or society against him, shall have actual enjoyment of the benefits of due process of law at its hands. Lawless acts by private individuals which snatch such benefits from the citizen, certainly defy and frustrate the purposes of the amendment. Why has not Congress, which is given power "to enforce" the amendment, power to punish such lawlessness, which so directly and inevitably defeats the purpose of the amendment?

This is not a case of a prohibition upon the power of Congress. The question is not whether Congress has been prohibited from doing anything in this connection, but whether it has been granted authority to do anything. It has been granted authority to enforce the prohibition, in order to secure the results intended to be effected by the prohibition. As was forcibly said in Boyd *v.* United States, 116 U. S., 635, of prohibitions contained in the Constitution, upon the powers of Congress, "A close, literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right as if it was more in sound than in substance. It is the duty of the courts to be watchful of the constitutional right of the citizen." It is said, however, that Congress has no power to conserve the otherwise conceded immunity of the citizen, because the State has vainly endeavored to protect its enjoyment. It is admitted, if State officers had participated in mobbing Maples

or conspired in any way to deprive him of the enjoyment of due process of law at the hands of the State that Congress could legislate against, and punish such acts on their part. *Ex parte* Virginia, 100 U. S., 339. But, it is urged because the State, was not at fault in these respects, that Congress has no power to punish acts of private individuals which destroy the citizen's right or immunity to enjoy due process of law at the hands of the State. It is reasonable to suppose when the protection of the right of the citizen to have due process at the hands of the State, was deemed of such paramount importance as to require the adoption of an amendment to the Constitution of the United States, imposing upon Congress the delicate duty of supervising the discharge of the duty by the State,
46 that the framers of the amendment and the people who adopted it, intended, when the amendment empowered Congress "to enforce" it, that Congress should have no power to punish individuals for doing acts, which, if done by State officers, it was within its authority and duty to punish? It was well known that the enjoyment of the right might be defeated by violence of individuals preventing the State from performing the duty, when it attempted to do so, as well as by faults of State officers. It is, nevertheless, insisted that no power has been conferred by the amendment upon Congress to protect the right to its full extent by dealing with one of the chief evils which destroy its enjoyment. It is insisted such power must be expressly given, or else it does not exist. The answer is furnished by the Supreme Court in two leading decisions, *Ex parte* Yarborough, 110 U. S., 658, and United States *v.* Waddell, 112 U. S., 80. In the former case, it is said: "The proposition that there is no such power, is supported by the old argument, often heard, often repeated, and in this court never assented to, that when a question of the power of Congress arises, the advocate of the power must be able to place his finger on the words which expressly grant it." Here, as there, it is urged because no express power is given to deal with violence exercised on the citizen and the State authorities to prevent "enjoyment of the constitutional right, that no law can be exacted to punish such acts." We repeat of this argument what was said of the same argument in Yarborough's case: "It destroys in one blow in construing the Constitution of the United States the doctrine universally applied to all instruments of writing, that what is applied is as much a part of the instrument as what is expressed. The principle, in its application to the Constitution of the United States more than to almost any other writing, is a necessity, by reason of the inherent inability to put into words all derivative powers, a difficulty which the instrument itself recognizes by conferring on Congress the authority to pass all laws necessary and proper to carry into execution the powers expressly granted, and all other powers vested in the Government or any branch of it by the Constitution. Art. 1, sec. 8, clause 18." In United States *v.* Waddell, 112 U. S. 80, the court, speaking of the enjoyment of a right dependent upon
47 or secured by the constitution or laws, said: "Whenever the acts complained of, are of a character to prevent this, or throw

obstacles in the way of exercising the right, and done for the purpose and with the intent, to injure or oppress a person because he has exercised them, then, because it is a right asserted under the law of the United States, and granted by that law, those acts come within the purview of the statute (section 5508) and of the constitutional power of Congress to make such statute. In the language of the court in *Ex parte* Yarborough, *supra*, the power arises out of the circumstances that the function in which the party is engaged, or the right which he is about to exercise, is dependent on the laws of the United States. In both of these cases, it is the duty of the Government to see that he may exercise this right freely, and protect him from violence while doing so, or on account of so doing." When a State officer is endeavoring to protect a person accused of crime, that he may be dealt with according to law, can there be any doubt that he is engaged in a function which the XIVth amendment to the Constitution commands him to perform? When lawless violence takes a prisoner from the custody of the officer, and puts him to death to prevent the discharge of the duty to protect him, is it not clear that such acts "are of a character to prevent this, or throw obstacles in the way of his exercising this right?" Is it not clear also that such acts by private individuals, injure or oppress the prisoner in the exercise of the right accorded to him by the amendment, to have due process at the hands of the State when held in custody for crime, and be protected while awaiting its further administration?

After anxious deliberation and careful examination of all the authorities, the court cannot resist the conclusion that Congress may protect the enjoyment of rights, privileges or immunities given or secured by the XIVth amendment, against impairment by lawless acts of private individuals, although neither State laws nor State officers are at fault, if such lawlessness takes the form of violence, directly preventing the State or its officers from affording due process to a prisoner, when the State is attempting to do so, provided such legislation does not go beyond prevention of that evil,
48 and does not attempt to alter or interfere with State laws or the authority of its officers in executing them. The argument that Congress has no such power because the amendment is directed against denial of due process by the State, and that there is no denial by the State when neither its laws nor its officers are at fault, ignores the pregnant fact that the amendment creates a right, privilege or immunity of a citizen of the United States, to have enjoyment of the benefit of due process at the hands of the State at least, when the citizen is in its custody and it is proceeding against him for infraction of its laws, and the further equally important fact that such lawless violence of private individuals, by preventing the State's giving the benefit of due process of law when it is endeavoring to do so, directly and inevitably defeats the enjoyment of his right or privilege, created by the Constitution of the United States, to have enjoyment of the benefit of due process at the hands of the

State, and thus fatally impairs enjoyment of the right, privilege or immunity. It is the settled and unbroken doctrine of the Supreme Court of the United States, that a right, "whether created by the Constitution of the United States, or only guaranteed by it, even without any express delegation of power, may be protected by Congress in such manner and form as Congress in the legitimate exercise of its legislative discretion shall provide." This doctrine which was emphatically enunciated in the great case of Prigg *v.* Pennsylvania, 16 Peters, 539, has since been constantly adhered to. Strauder *v.* West Virginia, 100 U. S., 311; Tennessee *v.* Davis, 100 U. S., 257; *United States v. Reese*, 92 U. S., 214; *Motes v. United States*, 458.

The only way to escape the application of this doctrine to this case, is to show either that no right, privilege or immunity is given by the XIVth amendment to the citizen to enjoy due process at the hands of the State, when it is endeavoring to afford it, or that violence directed against its officers which prevents them from doing so, does not deprive the citizen of the enjoyment of the benefits of the discharge of the duty by the State. The decisions of the
49 Supreme Court put it beyond the pale of controversy that the prohibitions upon State power in the XIVth amendment, create rights, privileges and immunities of citizens of the United States. As said in Strauder *v.* West Virginia, *supra*, "the XIVth amendment makes no attempt to enumerate the rights it is designed to protect. It speaks in general terms and these are as comprehensive as possible. Its language is prohibitory, but every prohibition implies the existence of rights and immunities." The right, privilege or immunity being thus established, the denial of the right of Congress to protect it, must rest upon the false premise that when a right or privilege is given to the citizen by the Constitution to have the State do certain things for him to secure a particular right for him, and the State is endeavoring to accord the enjoyment of that right, that acts of private individuals which directly, violently and intentionally, prevent the State from performing the duty, do not prevent the citizen from having the benefit of the performance of that duty at the hands of the State. To state the proposition is to answer it. Who will seriously contend, where the law puts the duty on B to render a particular service to A, that A may enjoy a right which the law intends thereby to secure to him, and which A can enjoy only by the performance of the duty by B, that violence directed towards B, which prevents his rendering the service to A, does not defeat A's enjoyment of that right? The question here, whether enjoyment of any right, privilege or immunity of the citizen under the XIVth amendment is violated, when the State holds a prisoner on accusation of crime, and is endeavoring to afford him due process of law, and is prevented by violence or private individuals from doing so, has never been before the Supreme Court. That court has been careful to avoid defining the privileges and immunities of citizens of the United States until "some case involving these

privileges makes it necessary to do so." Slaughter House case, 16 Wallace, 79. General expressions in opinions not raising the question here, are not in anywise binding, in determining whether the acts charged in the indictment constitute a violation of any right, privilege or immunity of a citizen of the United States. It suffices to say of those opinions, without citing them, that they combatted the power of Congress, under this amendment, to enter upon
50 plenary legislation, altering or interfering with State laws, when neither the State nor its officers are at fault, and that they do not touch upon the power of Congress by appropriate legislation to protect any immunities or rights which the amendment gave, although the State was not at fault, against the acts of lawless individuals. The Supreme Court itself has repeatedly declared "that any opinion given here or elsewhere cannot be relied upon as binding authority, unless the case calls for its expression." Carroll *v.* Carroll, 16 Howard, 275; Bardes *v.* Hawarden, 178 U. S., 534; Bryan *v.* Bernheimer, 181 U. S. 197; Cohens *v.* Virginia, 6 Wheaton, 399.

The court does not doubt that Congress has power to punish the acts charged in the indictment, and that sections 5508 and 5509 of the Revised Statutes apply to them, and are "appropriate" legislation to that end. The result is that the writ must be discharged, and the prisoner remanded to the custody of the marshal.

51 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

Certificate to the Supreme Court of the United States.

Ex Parte THOMAS RIGGINS.

Thomas Riggins, the petitioner, having prayed for and obtained an appeal from the judgment of this court rendered in this cause on the 26th day of October, 1904, wherein the court discharged the writ of *habeas corpus* sued out by him, and remanded the petitioner to the custody of the marshal, which appeal is returnable to the present term of the Supreme Court of the United States—this court now, under the provisions of section 5 of an act of Congress, approved March 3rd, 1891, entitled: "An act to establish circuit courts of appeal, and to define and regulate in certain causes the jurisdiction of the courts of the United States, and for other purposes," hereby certifies to the honorable, the Supreme Court of the United States, the following questions of jurisdiction:

1. Has this court jurisdiction, under the Constitution and laws of the United States, to try and punish white men, upon proper indictment legally preferred and returned against them, for conspiring to deprive, and, in pursuance of such conspiracy, depriving a citizen of the United States of African descent and of color, legally held in

jail by the State authorities for trial upon accusation duly preferred against him of the commission of a crime against the laws of the State, of the enjoyment and benefit of a trial in the courts of the State according to the settled course of judicial procedure therein, when such conspiracy is executed by forcibly taking such prisoner a citizen of the United States from the custody of the State officers and afterwards murdering him, and in that way, preventing the State from affording him such trial, when by the laws of the State the right to enjoy such trial is secured to white citizens so accused and held by the State, and when such conspiracy was formed and executed because of the race of such negro citizen of the United States, and with the intent and purpose for that reason to deprive him of the enjoyment and benefit of such trial in the courts
52 of the State?

2. Is there any valid legislation of Congress which gives this court jurisdiction to try and punish white men, upon proper indictment, lawfully preferred against them, and duly returned into court, for conspiring to deprive a citizen of the United States of African descent and of color, then confined by the State authorities upon accusation preferred against him by the State of the commission of a crime by him against the laws of such State, of the enjoyment of the benefits of a trial by jury in the courts of the State according to the settled course of judicial procedure therein, when the conspiracy by such white men against such negro citizen of the United States was formed because of race malevolence, and with the intent and purpose, because of such negro citizen's race, he being a citizen of the United States, to deprive him of the enjoyment of the civil rights to such trial by jury in the State courts, which is a right accorded, under like circumstances, to all white citizens therein by the laws thereof?

3. When a citizen of the United States, no matter to what race he belongs, is taken into custody and imprisoned upon accusation lawfully preferred against him by the State of the commission of a felony against its laws, and held for trial in the courts, that he may be punished if guilty and discharged if innocent, and the sheriff and a State military organization, which he has summoned to his assistance, endeavor to safely keep such citizen of the United States that he may be so tried, and a mob overpowers them and forcibly takes such citizen of the United States from the jail where he is confined for trial, and murders him, before the State has afforded such citizen of the United States a trial, with the design and purpose to punish such citizen of the United States for the crime charged against him without lawful trial and to prevent the enjoyment by such citizen of the United States of the benefits of a trial by due course of judicial procedure in the courts of the State, which is a right secured by the laws of the State to all persons so accused of crime, do the individuals who aid in forcibly taking the prisoner fromhthe custody of the State authorities and murder him with the

intent and purpose aforesaid, to prevent his enjoyment of a
53 trial by due course of judicial procedure in the courts of the State, commit any offense against the laws of the United States, which this court has jurisdiction to try and punish, upon proper indictment legally preferred and returned against the participants in such mob?

4. When the State, which has provided impartial laws and proper tribunals and modes for administering justice to persons accused of crime against its laws, holds a citizen of the United States in actual custody for the purpose of giving him a trial by due process of law on accusation of crime preferred against him by the State, and the State authorities endeavor to safely keep and protect such citizen of the United States that he may enjoy the benefit of such trial in the courts of the State, and the State authorities are overpowered and prevented from safely keeping such citizen of the United States and prevented from affording such trial, by due course of judicial procedure in the courts of the State, by private persons, who by unlawful concert among themselves, forcibly take the citizen of the United States, so in custody, from the possession and protection of the State authorities, and put him to death, with the intent and purpose to prevent his enjoying a trial by due process of law, and to prevent the State from affording him such trial, do such private individuals, who thus prevent the State from affording such citizen of the United States a trial by due process of law injure, oppress, threaten or intimidate such citizen of the United States in the free exercise or enjoyment of a right or privilege secured to him by the Constitution or laws of the United States, within the meaning of sections 5508 and 5509 of the Revised Statutes of the United States, so as to give this court jurisdiction to try and punish such private individuals for the conspiracy and acts done in pursuance thereof, upon proper indictment lawfully preferred and duly returned against them?

5. When a citizen of the United States, lawfully confined by the State authorities for trial upon accusation of crime against the laws of the State, is taken by lawless private individuals from the actual custody of the State before such trial is afforded such citizen
54 of the United States, and put to death by such private individuals, pursuant to a conspiracy formed and executed with the intent and design to prevent such citizen of the United States *fr* from enjoying such trial at the hands of the State, which is a right secured by the law of the State to all persons accused of crime, does such conpiracy and murder done in the execution and purpose of the conspiracy deprive such citizen of the United States of the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or injure or oppress him in the enjoyment of any right or privilege or immunity secured to him by the Constitution or laws of the United States, within the purview of sections 5508 and 5509 of the Revised Statutes, so as to give this court jurisdiction, upon proper indictment duly returned

against the offenders, to try and punish such conspirators for the conspiracy and acts done in furtherance thereof?

6. When the settled course of judicial procedure in a State for administering justice to all persons accused of the commission of a crime against the laws of the State, requires among other things, that the accused shall be safely kept until brought before the court, the impanelling of a jury for his trial, the hearing of witnesses and argument of counsel in behalf of the accused, the instruction of a jury as to the law of the case by a judge, the seclusion of the jury from outside interference until they return a verdict in open court in the presence of the prisoner, the passing of judgment upon the verdict, suspending execution of the sentence until it can be heard by the appellate court, in event he is found guilty, and the State provides impartial law, proper tribunals, and sufficient modes for according these rights to the accused, and the officers of the State are not in fault in executing such laws, is there any law of the United States which, under such circumstances, makes it a criminal offense against the United States, for private individuals to assail the State authorities, and forcibly take from their possession and protection a citizen of the United States, who is held by them for trial upon accusation of crime against the laws of the State, before he has enjoyed the benefit of such trial, and murder such citizen of the United
55 States, with the intent and purpose to prevent, and by such murder preventing, the State from affording such prisoner the enjoyment of a trial by due course of judicial procedure, and thereby defeating the right of such citizen of the United States to enjoy the benefit of such trial, so that this court has jurisdiction to try and punish the offenders upon indictment duly and legally preferred and returned against them?

7. Is it not a right, privilege or immunity of a citizen of the United States, accorded by, arising under, or dependent upon, the Constitution, when such citizen of the United States is accused of crime against the laws of the State, and held in confinement by the State for trial according to the law of the land upon such accusation, to have the State afford him the enjoyment of a trial by due process of law, so protected by the laws of the United States that private individuals, who, by unlawful concert among themselves, and by physical violence exerted against the life of the accused and the officers of the State, when they are endeavoring to discharge the duty of affording him a trial on accusation of crime by due course of judicial procedure, prevent the State from so doing, and thereby deprive the accused of the enjoyment of a trial according to the settled course of judicial procedure in the State, can be proceeded against, and punished, upon indictment lawfully preferred and returned against them, for conspiring to injure or oppress such citizen of the United States, in the free exercise or enjoyment of a right or privilege secured to him by the Constitution or laws of the United States?

8. Do sections 5508 and 5509 of the Revised Statutes of the United

States apply to acts of private individuals who, pursuant to a conspiracy, lawlessly take a citizen of the United States, who is held in actual custody by the State authorities for trial upon due accusation of crime against its laws, and put such citizen of the United States to death, with the intent and design to prevent his enjoyment of such trial by due course of judicial procedure, which is a right accorded by the laws of the State to all persons, when the State has furnished proper tribunals and laws to afford such citizen a trial by due process of law, and is not at fault in executing such
56 laws, so as to give this court jurisdiction, upon proper indictment duly returned against them, to try and punish them for such conspiracy and acts done in pursuance thereof?

9. Does the third count of the indictment charge any offense against the laws of the United States, which this court has jurisdiction to try and punish?

10. Does the sixth count of the indictment charge any offense against the laws of the United States, which this court has jurisdiction to try and punish?

11. Does the fourth count of the indictment charge any offense against the laws of the United States, which this court has jurisdiction to try and punish?

Done and certified in open court, this 26th day of October, A. D., 1904.

THOS. G. JONES,

U. S. Dist. Judge for Northern and Middle Districts of Alabama, Presiding and Holding the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

Endorsed: Filed October 26th, 1904. Chas. J. Allison, clerk.

57 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

UNITED STATES, Plaintiff,
vs.
THOMAS M. RIGGINS, Defendant.

To the United States of America:

You are hereby cited and admonished to be and appear at the present term of the Supreme Court of the United States, held in the city of Washington, the term thereof commencing on the second Monday in October 1904, pursuant to an appeal filed in this court, wherein the defendant, Thomas M. Riggins is appellant and The United States is respondent, to show cause, if any there be, by the judgment of said court mentioned in the appeal should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 26th day of October, 1904.

THOS. G. JONES,
Judge Presiding.

I hereby acknowledge due and legal service in open court of the foregoing citation, this 26th day of October, 1904.

THOS. R. ROUHAC,
U. S. District Att'y for the Northern District of Alabama.

Filed in open court, Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

58 UNITED STATES OF AMERICA,
Northern District of Alabama, Northern Division.

I, Charles J. Allison, clerk of the circuit court of the United States of America in and for said division of said district, do hereby certify that the foregoing is a true, full, and complete copy of all petitions and orders filed, and proceedings had in the cause of The United States *vs.* Thomas M. Riggins, on appeal to the Supreme Court of the United States, wherein Thomas M. Riggins is appellant, and The United States is appellee, as fully as the same does appear of record and from the files in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at office in the city of Huntsville, in said district, this twenty-sixth day of December, 1904.

{Seal United States Circuit Court, District of Alabama, Northern Division.}

CHAS. J. ALLISON,
Clerk of the U. S. Circuit Court, Northern Division,
Northern District of Alabama.

Endorsed on cover: File No. 19,616. N. Alabama C. C. U. S. Term No. 169. Thomas M. Riggins, appellant, *vs.* The United States. Filed January 27th, 1905. File No. 19,616.

Supreme Court of the United States

OCTOBER TERM, 1904

No. 516

THOMAS M. RIGGINS, PLAINTIFF IN ERROR,

vs.

UNITED STATES, DEFENDANT IN ERROR.

To The Honorable, The Supreme Court of The United States:

Now comes, Thomas M. Riggins, Plaintiff in Error, by his Counsel, and moves the Court, that the above entitled cause be advanced under the provisions of Rule 32, of this Court, and heard under Rule 6, in regard to motions to dismiss writs of error and appeals, upon the ground that this case is brought to this Court by Appeal, under section 5, of the Act of March 3, 1891, Chapter 517, and for the reason, that the only question involved therein, is that of the jurisdiction of the Circuit Court of the United States.

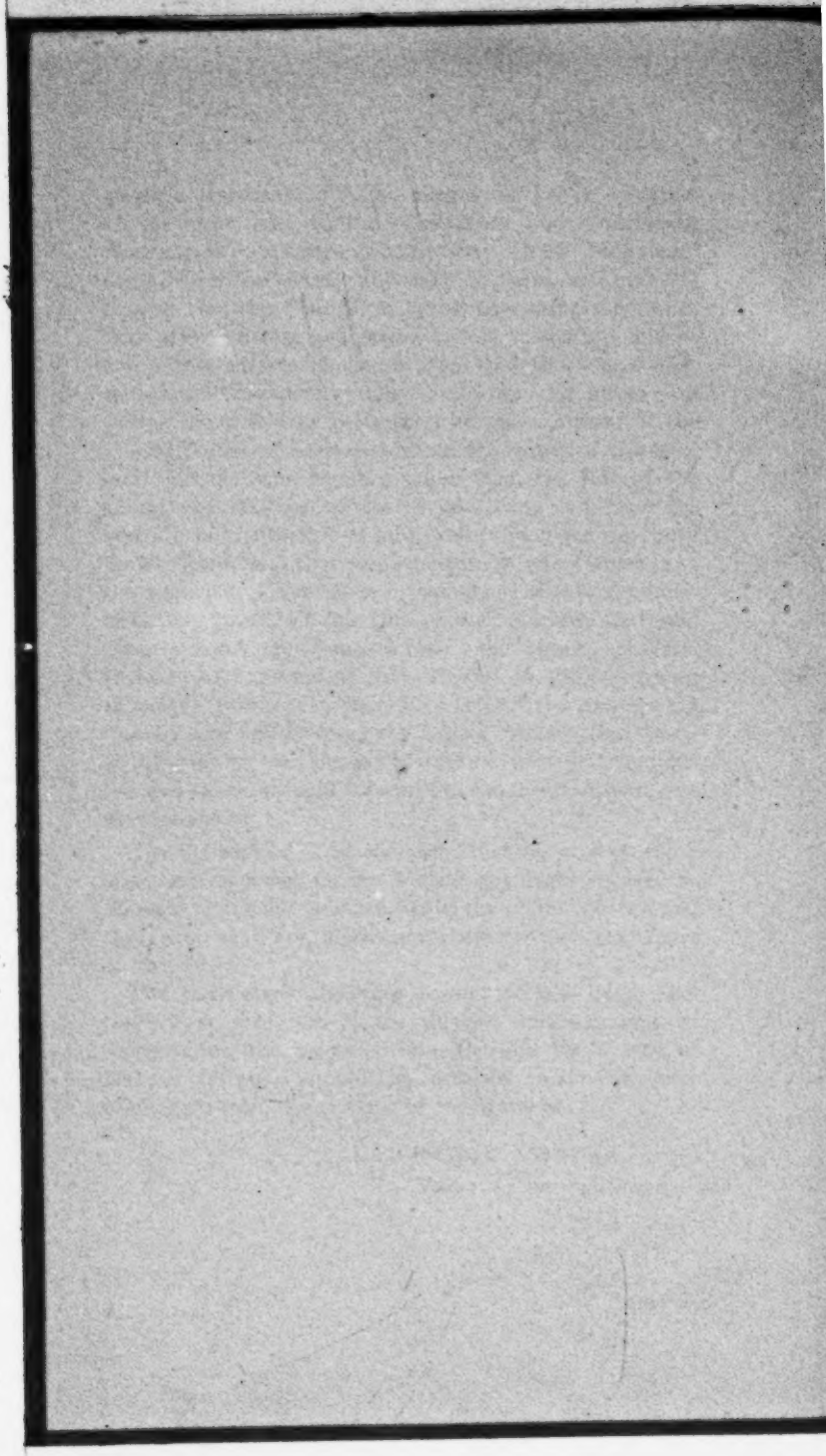
This case is an appeal from the judgment of the Court below, denying the prayer of a Petition filed therein, by the Plaintiff in Error, Thomas M. Riggins, for his discharge from the custody of the Marshal. The Plaintiff in Error is indicted, with others, under sections 5508 and 5509 of the Revised Statutes, for a conspiracy,

under a statement of facts, alleged to be in violation of the provisions of the Thirteenth and Fourteenth Amendments to the Constitution. The Indictment contains several counts, and each of them, substantially charge, that the Plaintiff in Error, conspiring thereunto, with other persons, composing a mob, unlawfully killed, and murdered, one Horace Maples, and that the combination and conspiracy was formed for the purpose of killing the said Horace Maples who was a citizen of the United States, of African descent, by reason of his race, and that he was forcibly taken from the Jail of the County of Madison, State of Alabama, and from the custody of the Sheriff of said County, and hanged until he was dead; and that said conspiracy was formed, and the alleged acts were done in pursuance of said combination, by reason of the race of said Maples; that said alleged conspiracy was formed to injure, oppress, threaten and intimidate said Maples, in the enjoyment of a right, privilege or immunity secured to him by the Constitution and Laws of the United States; that being so hanged, he was denied a trial by jury and that his life was taken by said alleged conspirators without due process of law.

The Plaintiff in Error contends, that the acts of which complaint is made, do not violate any right secured to Maples, under the Constitution of the United States, and that said acts are alone punishable under the Laws of the State.

The Indictment, therefore, cannot be laid, under sections 5508 and 5509 of the Revised Statutes; and, in consequence, the prayer of the Petition for a writ of Habeas Corpus, should be granted, and Petitioner discharged from the custody of the Marshal.

LAWRENCE COOPER,
Attorney for Petitioner.



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Office Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 169.

THOMAS M. RIGGINS, APPELLANT,

vs.

THE UNITED STATES.

BRIEF FOR THE APPELLANT.

LAWRENCE COOPER,
Counsel for the Appellant.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 18308

(19,616.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 169.

THOMAS M. RIGGINS, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

BRIEF FOR APPELLANT.

Statement.

The indictment contains five counts, varying in form of expression rather than in substantial matter. The alleged offense consists of a conspiracy or combination on the part of the appellant, with other persons, to injure and oppress one Horace Maples, a citizen of the United States of African descent, in the enjoyment of a right, privilege and immunity secured to him under the laws of the United States. The averment is made, substantially, that said Maples was in the legal custody and under the protection of the sheriff of the county of Madison, State of Alabama, aided by the Alabama National Guard, under an indictment charging said Maples with murder, presented by a court of competent jurisdiction of the said county of Madison; that the appellant and others of the alleged combination conspired and banded together for the purpose of forcibly taking the said Maples from the

custody of the lawful officers of the State, and in pursuance of said preconceived plan did forcibly take said Maples from the custody of said officers, and hung him until he was dead; that the conspiracy was so formed, and the purpose and design thereof was executed, because of the race of said Maples, thus denying to him the right to a trial by jury, and to be punished if guilty, or acquitted if innocent. The right of trial by jury, it is averred, being denied to him by reason of his death at the hands of the alleged conspirators, the said Maples was deprived of a privilege and immunity secured to him under the Constitution and laws of the United States.

The indictment, stripped of its prolixity and redundancy, avers that the appellant and others entered into a conspiracy to take Maples, a citizen of African descent, from the State officers, to whose custody he had been lawfully committed under a charge of murder, and to hang him until he was dead, and that said conspiracy was formed and its purpose executed because the said Maples was of African descent.

In ordinary significance, Maples was lynched while in the custody of the State authority under a charge of murder, and the appellant and others are charged by the Federal grand jury with the alleged offense under the idea that the Federal law has been violated.

The appellant, being in the custody of the marshal under a legal commitment, made application to the circuit court for a writ of *habeas corpus* under the provisions of section 754 of the Revised Statutes. The writ was awarded, and on the hearing the prayer of the petition was denied, the writ discharged, and the petitioner remanded to the custody of the marshal, to be held under said indictment and the capias until discharged by due process of law (Record, p. 13). Thereupon the appellant sues out an appeal to this court from the final decision of the circuit court as authorized by section 764 of the Revised Statutes.

The petition for the writ of *habeas corpus* avers that the

indictment charges no offense punishable under the laws of the United States; that the indictment charging the appellant, with others, of entering into a conspiracy to take Maples from the custody of the State officers while under an indictment for murder, and, in furtherance of the combination, to hang him until he was dead, thereby depriving him of a trial by jury, did not show that the appellant violated any right, privilege and immunity secured to said Maples under the Constitution of the United States, or that any Federal law was infracted providing for the punishment of such an alleged offense, and that it does not appear from the indictment that the conspiracy, combination, or confederation therein alleged was formed and entered into through any law of the State of Alabama thereby authorizing said alleged conspiracy, combination, or confederation, or that any law of the State of Alabama authorized its citizens or other persons to enter into a conspiracy to injure, threaten or oppress said Maples, a citizen of the United States of African descent or color, by denying to him, said Maples, a person of African descent, by reason of his race, the right, privilege, and immunity of a trial by jury to determine his guilt or innocence upon an indictment for murder pending against him in the courts of Alabama.

The indictment is preferred under section 5508 of the Revised Statutes:

"If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years; and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

The violation of this statute finds additional punishment in section 5509:

"If in the act of violating any provision in either of the two preceding sections any other felony or misdemeanor be committed, the offender shall be punished for the same with such punishment as is attached to such felony or misdemeanor by the laws of the State in which the offense is committed."

Under the laws of Alabama the distinction between accessories before the fact and a principal and between principals in the first and second degree, in cases of felony, is abolished. Section 4308 of the Code of 1896 reads:

"The distinction between accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abolished; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid or abet in its commission, though not present, must hereafter be indicted, tried and punished as principals, as in the case of misdemeanors."

If the appellant has committed any offense, he is guilty of murder under the facts averred. The averment as to the conspiracy, whether it means a mere combination for the accomplishment of the end or an actual participation in the hanging of Maples, would make the offense, under the laws of Alabama, murder in the first degree, punishable by death or life imprisonment. The statutes read as follows:

"Every homicide, perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious and premeditated killing; or committed in the perpetration of, or the attempt to perpetrate, any arson, rape, robbery, or burglary, or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed; or perpetrated by any act greatly dangerous to the lives of others, and evidencing a depraved mind regardless of human life, although without any preconceived purpose to deprive any particular person of life,

is murder in the first degree; and every other homicide, committed under such circumstances as would have constituted murder at common law, is murder in the second degree."—Revised Code of 1896, section 4854.

"Any person, who is guilty of murder in the first degree, must, on conviction, suffer death, or imprisonment in the penitentiary for life, at the discretion of the jury; and any person, who is guilty of murder in the second degree, must, on conviction, be imprisoned in the penitentiary for not less than ten years, at the discretion of the jury."—Revised Code of 1896, section 4858.

The following are the assignments of error upon which the appellant relies for the reversal of the judgment of the trial court:

Assignments of Error.

1. The court erred in refusing to grant the prayer of said petition.

2. The court erred in refusing to discharge the petitioner and in remanding him to the custody of the marshal.

3. The court erred in not determining as a matter of law that the indictment—a certified copy of which is annexed to the petition—charged no offense punishable under the laws of the United States.

4. The court erred in determining that the said indictment, charging this defendant with a conspiracy or combination to injure, threaten, and oppress one Horace Maples, a citizen of the United States of African descent and color, in denying the said Horace Maples a trial by jury, charges an offense which is punishable under the laws of the United States.

5. The court erred in refusing to hold that the said indictment charging this defendant with a corspiracy to injure,

threaten, and oppress Horace Maples, a citizen of the United States of African descent and color, in denying him a trial by jury upon an indictment for murder in the courts of Alabama, by hanging him, did not charge any offense cognizable by the courts of the United States or punishable under the laws of the United States.

6. The court erred in holding that said indictment charging this defendant, together with one Robert Powell and others, with entering into a conspiracy to injure, threaten, or oppress Horace Maples, a citizen of the United States of African descent and color, in denying to the said Horace Maples, by reason of his race, a trial by jury upon an indictment in the courts of Alabama, under an indictment for murder, whereby his guilt or innocence might be determined, constituted an offense within the jurisdiction of the courts of the United States or punishable under the laws of the United States.

7. The court erred in holding that the facts set forth in said indictment charged an offense within the jurdiction of the courts of the United States and punishable under the laws of the United States.

8. The court erred in refusing to hold that the facts set forth in said indictment, and in each count thereof, charged an offense punishable only in the courts of the State of Alabama.

THE ARGUMENT.

The inquiry which we meet at the threshold is whether Maples was injured, oppressed, threatened or intiminated in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States by reason of the facts alleged in the several counts of the indictment.

We may inquire, primarily, from what source is the right of the citizen to be held harmless against the violence of a mob derived? He relies upon the law of his State as a shield for his protection, and invokes its strong arm to prevent the commission of any wrong against his person.

The mob is a combination of people whose purpose is not merely to violate the law, but to defy its enforcement according to legal procedure. To prevent a violation of the law, the injured or oppressed citizen is under the protection of the sheriff, the officer designated by the State, and the representative of the majesty of the law, and frequently, as in the case at bar, reinforced by the military power of the State. It is vigorously asserted by the trial court that Maples, being thus under the protection of the State of Alabama, had the constitutional right to be tried by a jury, and that the act of the mob in forcibly taking him from the custody of the sheriff and overriding the military power of the State deprived him of the right to be tried by a jury and convicted if guilty, or acquitted if innocent, and, therefore, a right secured under the Federal Constitution has been denied him, rendering the guilty amenable to punishment under section 5508 of the Revised Statutes.

There is no pretense that the State of Alabama was remiss in the protection it endeavored to afford Maples. He was confined in the county jail, ordinarily safe against escape, as well as all intrusions, and guarded by the military power of the State. The State extends its greatest power to the protection of the prisoner, and there is no suggestion that the State, through any of its departments, was negligent in the performance of any duty it owed its prisoner. The complaint is not for any affirmative act the State has done or could have accomplished, but the violated right is from the individual action of citizens, impelled through a sense of vengeance on account of race prejudice. At once we are confronted with the logical conclusion that the violation of any right possessed by a white man or a negro by members of

the opposing race on account of the difference in race inveighs against the statute and renders the parties liable to prosecution. If this be true, a law more unfortunate could never have been conceived. The breach is wide today between the races in every State in the Union, and probably to a greater extent in those States where the negro is less known, or where his imperfections are not overlooked, rather than in those States where he is apparently unobserved because of his recognized incapacities, influences of heredity, and existing predilections. If every disagreement between the members of the different races constituted a basis of criminal action for the violation of a supposed constitutional right punishable by the Federal courts, the seat of discord and litigation would be immediately transferred to the Federal courts, although it has been constantly the expressed intent to limit rather than increase this jurisdiction.

The violation of a constitutional right of a negro by a negro, or of a white man by a white man, may not be within the statute, but the argument is made, in the opinion of the trial court, that the violation of the constitutional rights of members of one race by those of the other race offends the statute under which the appellant is indicted. This, indeed, is a sad spectacle, in the focalization of power in the Federal courts, where the superior race, the white man, could oppress the inferior race, the negro, through the machinery of the courts, or where the inferior race could bring its grievances for hearing through universal prosecutions, although action among members of the same race for the identical violation of the same right would not be the subject of a passing consideration.

While the negro is the ward of the nation, the Caucasian is the pride and crowning glory of the Republic, for through him it was conceived and created and its destiny forever established. Federal legislature has for its purpose the protection of all of its citizens, regardless of race, and shallow indeed would be the statesmanship of this country to adopt

a system of legislation discriminating in its procedure, or recognize as necessary laws for one race against the other which could not be utilized regardless of race. From whence, then, does the conception arise that the lynching of a member of one race by members of the other race, under a conspiracy, by reason of a prejudice that may exist against the race of the victim, invades the rights of the victim under the Constitution of the United States?

The source of power is suggested by the trial court as the thirteenth and fourteenth amendments to the Constitution.

THE THIRTEENTH AMENDMENT.

The language of the thirteenth article seems clear and its meaning unmistakable:

"Neither slavery, nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to this jurisdiction."

Whether we read this amendment in the light of events then recently occurring or according to the plain words of expression, no error is possible. Those of our citizenship who passed through the fiery and unfortunate ordeal culminating in the adoption of this provision in our Federal Constitution knew its meaning, and no adjudication could have furnished greater emphasis than was universally understood. The student of English idiom would quickly say that it needed no construction—that it meant what it said—that slavery was abolished and involuntary servitude, except for the duly convicted criminal, was forever prohibited.

Of whatever school of doctrine the citizen belonged, as to the relation of the States to the United States and the respective reserved and granted powers, agony and grief was carried into every household, during the period of four years or more of horror, to settle the question of the continued existence or the abolition of slavery. The warning procla-

mation of September 22, 1862, was the first act, national in character, to assist in the construction of the amendment. Following was the emancipation proclamation of January 1, 1863, declaring:

"That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves, within any State, or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free. * * *

"Now, therefore, I, Abraham Lincoln, President of the United States, by virtue of the power in me vested, as Commander-in-chief of the Army and Navy of the United States, in time of actual armed rebellion against the authority and Government of the United States and as a fit and necessary war measure for suppressing said rebellion, * * * And, by virtue of the power, and for the purpose, aforesaid, I do order and declare, that all persons held as slaves, within said designated States, and parts of States, are, and henceforward shall be free, and that the executive Government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons. * * * And, I further declare and make known that such persons of suitable condition will be received into the armed service of the United States, to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.

"And upon this act, sincerely believed to be an act of justice, warranted by the Constitution, upon military necessity, I invoke the considerate judgment of mankind and the gracious favor of Almighty God."

It is stated by Nicolay and Hay, the biographers of Mr. Lincoln, that—

"Fame is due Mr. Lincoln, not alone because he decreed emancipation, but because events so shaped themselves under his guidance as to render the conception practical and the decree successful. Among the agencies he employed none proved more admirable or more powerful than this two-edged sword of the final proclamation, blending sentiment with *force*, leaguing liberty with union, *filling the voting armies at home and the fighting armies in the field.* In

the light of history we can see that by this edict Mr. Lincoln gave slavery its vital thrust, its mortal wound. It was the word of decision, the judgment without appeal, the sentence of doom."

The proclamation was absolute and obvious, that all persons thenceforward should be forever free, although an expression of belief was deemed necessary, that it was "warranted by the Constitution upon military necessity." The absence of affirmatively expressed power in the fundamental law possibly caused the biographers to style the proclamation an "edict" (quite unusual in English nomenclature), the word of decision, the judgment without appeal, the sentence of doom.

The proclamation served its intended purpose. By instantaneous transition all slaves were thereafter to be treated and accepted as freemen. The evolution from bondage to citizenship in the spectacular became transcendent, overleaping any like event in historical annals. Many slaves grasped the invitation of the proclamation and enlisted in the army of the United States and stood in battle array against their former masterhood. This panorama, as wonderful in imagery as it is true in fact, is epitomized by the bronze memorial, in *bas relief*, erected on Boston commons, commemorative of the enlistment of one hundred and sixty-eight thousand former slaves, evidencing the culmination of the dramatic era.

Following these events, scarcely more than two years intervening, this amendment was proposed on the first day of February, 1865, and its adoption was declared on the 18th day of December, 1865, before the final cessation of hostilities was officially determined, on the 20th day of August, 1866.

United States *vs.* Anderson, 9 Wallace, 56 (71).
Levy *vs.* Stewart, 11 Wallace, 244 (253).

The abolition of slavery, therefore, became complete before peace in a legal sense prevailed throughout the land. Reading this amendment in the light of these events and according to the recognized purpose of its foundation, it simply abolished slavery as an American institution, and forever prohibited involuntary servitude, except as a punishment for crime.

The writer cannot believe that Mr. Lincoln in his proclamation, or the framers of the amendment in establishing universal freedom and prohibiting involuntary servitude through the amendment, intended to bring within its grip the individual acts of the citizens arising from differences or enmities among the members of the races. The amendment simply placed every citizen upon an equal footing, and meant personal freedom to every one. There was no effort at race arraignment. The status was established, and the rights of the citizen were left subject to existing laws. The argument in the Civil Rights Case, 109 U. S., 3, is so clear that it would seem conclusive that the indictment makes no charge against the appellant incident to slavery or involuntary servitude. The court tells us that the amendment "simply abolished slavery," and that it "has respect, not to distinctions of race or color, but to slavery." The court further say:

"When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the process of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected."

What form, phase, element, or condition of slavery or involuntary servitude involved Maples when he was hung and put to death by the mob? We may assume that he knew nothing of slavery or servitude—the subject of constitutional

law. Born years after the adoption of the amendment, he was a citizen of the United States, having equal rights and privileges with every other man, without regard to race or color. The day he was born he attained the degree of citizenship in the progress of the elevation of his race. He was not a special favorite of the law any more than the Caucasian of highest blood born during the same period.

We submit under no rule of construction can we properly reach the conclusion that an assault upon a citizen of African descent by a white person, with whatever violence, involves a species of slavery or form of involuntary servitude.

In United States vs. Harris, 106 U. S., 629 (643), it is said:

"If, therefore, we hold that section 5519 is warranted by the thirteenth amendment, we should, by virtue of that amendment, accord to Congress the power to punish every crime by which the right of any person to life, property or reputation is invaded. Thus, under a provision of the Constitution, which simply abolished slavery and involuntary servitude, we should, with few exceptions, invest Congress with power over the whole catalogue of crimes."

Section 5519 being eliminated from all consideration, it is claimed that the acts averred are within the amendment, and are punishable under the first clause of section 5508, providing:

"If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States."

These words may have the broadest significance, but surely can have no application to a provision simply abolishing slavery or involuntary servitude. There was no effort to return Maples to the condition of negroes in the slave-holding period. Under the averment, the mob had the intention to destroy life, to murder, not to preserve life in order that service, without consent, might be obtained.

It is claimed by the trial court that the lynching of Maples constituted the denial of a right secured to him under the fourteenth amendment.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

This amendment has so often come under discussion that it would seem surprising, in view of the numerous declarations of this court, for the contention to be made that the acts of individuals in the infliction of a personal injury denied to the victim any constitutional right, or that it invaded his right to an equal protection of the law.

The purpose of the amendment has been so often reiterated that it must be accepted as finally settled that the design was to annul all State legislation, existing or attempted to be created, discriminating against the colored race in the rights incidental to citizenship.

Being prohibitory of adverse State action through any of its departments, the primary inquiry arises, What has the State done whereby any right of Maples was denied or abridged? Maples was a prisoner in charge of the legal custodian and under his protection. In the effort to shield him the Alabama National Guard was present to assist in the protection of Maples. The civil and military power of the State therefore endeavors to maintain the law and defend the prisoner. If the entire force of the State is physically overcome by the conspiring mob, has the State failed to perform any duty it owed the prisoner?

In the Slaughter-house cases it is said that the existence of laws in the States where the newly emancipated negroes resided which discriminated with gross injustice and hardship against them as a class was the evil to be remedied, and by the amendment such laws were forbidden.

In *Ex parte* Virginia, 100 U. S., 339 (346), it is said:

"The prohibitions of the fourteenth amendment are directed to the States, and they are to a degree restrictions of State power. It is these which Congress is empowered to enforce, and to enforce against State action, however put forth, whether the action be executive, legislative or judicial."

The State, as a political governmental division, through any of its agencies or instrumentalities, is prohibited from passing or enforcing any law abridging the privileges or immunities of the citizen. The nature and character of the offensive legislation has been frequently pointed out by the court, and this legislation and the enforcement of it is the subject of condemnation. The first eleven amendments were restrictive of Federal power. The thirteenth amendment was declaratory of a condition which thereafter must never exist, vesting in Congress the affirmative power to adopt legislation necessary for its proper enforcement, and, therefore, it was an enlargement of Federal power. The fourteenth amendment asserts power in the United States, as distinguished from the reserved power of the States, and its language, read in the light of the first eleven amendments, gives emphasis to the conclusion that it was directed against the action of the States, and not against the action of individuals.

This court, in Strauder *vs.* West Virginia, 100 U. S., 303 (107), quotes approvingly the language used in the Slaughter-house cases:

"The existence of laws in the States where the newly emancipated negroes reside, which discriminated with gross injustice and hardship against them as a class, was

the evil to be remedied, and by it, (the fourteenth amendment) *such laws* were forbidden. * * * We doubt very much whether *any action of a State*, not directed by way of discrimination against the negroes, as a class, will ever be held to come within the purview of this provision."

This opinion means, what it better expresses, that there shall be no legislation discriminating between the races. The purpose is to lift the negro, in a legal sense, to the superior altitude of the white race. The ascendency of the white man is everywhere recognized, and the effort is to bring the negro, in the course of time, to this elevation by prohibiting the exercise of any State power that will prevent him from the enjoyment of the same legal rights.

The well-understood doctrine is aptly stated in Virginia vs. Rives, 100 U. S., 313 (318):

"The provisions of the fourteenth amendment of the Constitution we have quoted, all have reference to State action exclusively, *and not to any action of private individuals.* It is the State which is prohibited from denying to any person within its jurisdiction, the equal protection of the laws, and consequently the statutes partially enumerating what civil rights colored men shall enjoy equally with white persons, founded as they are upon the amendment, are intended for protection against State infringement of those rights."

The Civil Rights cases, 109 U. S., 3, decided October 15, 1883, announced a doctrine of construction which has remained unshaken. During this period of more than twenty years it has not been supposed that mob violence, however serious and condemnable, violated any right of the citizen secured to him under this amendment, except as attempted under the unconstitutional section 5519, until we are confronted with the indictment in this cause. In every section of the country which is inhabited to any appreciable degree by the negro there have been many unfortunate clashes between the races. In a number of instances the mob spirit, dominated by the white race, has prevailed and the negro

has been the victim. Whether this fact be illustrated by the horrible affair, resulting in murder, at Statesboro, Georgia, or the widespread destruction at Springfield, Ohio, resulting in arson, the condition is the same. Yet the ultraist has never contended that this race prejudice and the consequent act, if such it be, violated the privileges and immunities secured to the negro under the Federal Constitution. No State has any law or has attempted any legislation or the exercise of any power through any of its departments of administration encouraging the unlawful act of any combination of people in putting to death any citizen. It must be clear that, unless there has been some such action on the part of the State, there has been no invasion of the amendment.

"It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the amendment. It has a deeper and broader scope. It multiplies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property, without due process of law, or which denies to any of them, the equal protection of the laws. It not only does this, but, in order that the national will, thus declared, may not be a mere *brutum fulmen*, the last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectually null, void and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. * * * Positive rights and privileges are undoubtedly secured by the fourteenth amendment, but they are secured by way of prohibition against State laws and State proceedings affecting these rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect, and such legislation must necessarily be predicated upon such supposed State laws of State

proceedings, and be directed to the correction of their operation and effect."

Civil Rights case, 109 U. S., p. 3 (11).

The court in this cause further say:

"Until some State law has been passed or some State action through its officers or agents has been, adverse to the rights of citizens sought to be protected by the fourteenth amendment, no legislation of the United States, under said amendment, nor any proceeding under such legislation, can be called into activity: for the prohibitions of the amendment are against State laws and acts done under State authority. In fine, the legislation which Congress is authorized to adopt in this behalf, is not general legislation upon the rights of the citizen, but corrective legislation, that is, such as may be necessary and proper for constructing such laws as the States may adopt or enforce, and which, by the amendment, they are prohibited from making or enforcing, in such acts and proceedings as the States may commit or make, and, which, by the amendment, they are prohibited from committing or taking."

We may make the inquiry, Why have not the Federal courts, during this long period of intervening years prosecuted the parties who, through the combination of numbers and physical power, have in many sections of the country committed murder or crime? A mob moves independent of all law—it is the creature of revenge, born in anarchy and nurtured by disorder. A combination of men formed to overthrow the administration of government, in a special case, and execute violence upon the citizen, under the protection of State authority, is a mob; but none can conceive that it had its origion in State law, which it defied. This would be the reply to the inquiry, but it is more comprehensively answered in the Civil Rights case (p. 17):

"An individual may commit an assult against the person, or commit murder, or use ruffian violence at the polls, or slander the good name of a fellow-citizen; but, unless protected in these wrongful acts by some shield of State law, or

State authority, he cannot destroy or injure the right, he will only render himself amenable to satisfaction or punishment, and, amenable therefore to the laws of the State, where the wrongful acts are committed."

The amendment does not abrogate the fundamental right of the State to protect its citizens in the enjoyment of life, liberty, and property. On the contrary, it recognizes the correlative duty of the State to extend this protection to its citizens. This is State sovereignty, and without it the right of protection, in the State, to its citizens could never exist. If the States, in their reserved powers, were by this amendment deprived of the power and duty of affording protection to their citizens, the force and effect of the earlier provisions of the Constitution would be destroyed. The amendment, therefore, does not destroy the power of the State to protect its citizens in the full enjoyment of life, liberty and property, and this right, being among the reserved powers of the States, it must follow that the trial and punishment of the person, or persons, or combination of persons inflicting injury to life, liberty, or property of other citizens is within the jurisdiction of the State courts, and there it can only reside. This court, in the Cruikshank case, 93 U. S., 542 (553), is authority for this view:

"Sovereignty, for this purpose, rests alone with the States."

And the court, leaving no place for argument, states in forceful terms the accepted interpretation of the Constitution (p. 555):

"Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more. The

power of the National Government is limited to the enforcement of this guaranty."

Also:

Scott *vs.* McNeal, 154 U. S., 34 (45).
Neal *vs.* Delaware, 103 U. S., 370 (397).
Pace *vs.* Alabama, 106 U. S., 583.
United States *vs.* Harris, 106 U. S., 629.
West *vs.* Louisiana, 194 U. S., 258.
Giozza *vs.* Tiernan, 148 U. S., 657.

We are unable to reconcile the opinion of the trial court with the frequently announced views of this court. It does not seem possible to overturn the argument of this court that the prohibition is against State action only, for, indeed, the language of the amendment, in the use of such explicit language, would necessarily create the limitation. Quoting from the opinion of the trial court, it is said:

"The fact that the State was without fault and endeavoring to do its duty, is not, however, at all conclusive of power of Congress to legislate under that amendment, and is material only in determining the channels in which that power may be exercised."

This suggestion may be unnecessary in the consideration of this cause, yet it is so inconsistent with our views that we cannot permit it to pass unchallenged. Primarily, we submit that Congress has not legislated on the subject. The gravamen of the charge against the appellant is not founded upon any act of Congress, but upon the supposed underlying idea that the right to be tried by a jury is a right secured to him under the Constitution and laws of the United States, and that a denial of this right by an individual or combination of persons violates the intent of the amendment.

If the State has performed its "duty" to the citizen, in that it has passed no law inhibiting the amendment, and is wholly without fault in the alleged denial of any constitutional right of the citizen, may we inquire what would be

the character of the legislation which Congress could pass? It must be clear that the power of Congress to legislate is limited to the action of the States in denying the constitutional rights of the citizen.

The effort of the individual to usurp the power of the State in the punishment of the criminal, by taking unto himself the person of the criminal and infliction of an injury upon him without an opportunity to be heard according to the rules of law, does not in any sense show any action on the part of the State to defeat the right of the citizen. The logic of the proposition makes the State responsible for the criminal act, while its entire power is directed to the maintenance of the law in securing the right to the citizen. If such a condition were possible, the amendment would have served a better purpose by a prohibition against the act of the individual in terms and remaining silent as to State action.

In this connection it may be noticed that at the first session of the 57th Congress, December 9, 1901, Mr. Hoar introduced in the Senate bill No. 1117, and that Mr. Moody, at the same session, and on December 10, 1901, introduced in the House bill No. 4572. These bills were for the protection of citizens of the United States against lynching, in default of protection by the State, and were referred to the respective judiciary committees. The first section of each bill reads:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the putting to death within any State of a citizen of the United States by a mob or riotous assemblage of three or more persons openly acting in concert in violation of law, and in default of protection of such citizen by such State or the officers thereof, shall be deemed a denial to such citizen by such State of the equal protection of the laws and a violation of the peace of the United States and an offense against the same."

We are advised that the bills were never reported, and we may assume that the committees, composed of eminent lawyers, after due investigation determined that the bills were without constitutional parentage. The effort was there made to declare the crime of putting to death by a mob assemblage, in default of State protection, as a denial to the citizen "by such State" of the equal protection of the laws.

The indictment in the case at bar seeks, without the aid of any statute, to define, declare, and punish lynchings, or mob violence, as a denial by the State of a constitutional right of the victim. If the amendment is self-assertive and self-executing, instead of being corrective in purpose, legislation would be unnecessary; and so it could not be controverted that if the Senate and House bills introducted at the 57th Congress were unconstitutional measures, that the present indictment charges the violation of no right secured to the citizen under the amendment.

If a mob composed of white persons inflicted an injury upon a white person, or if a mob of negroes injure a negro, would it be urged that a constitutional right of the victim had been violated—that the State was guilty of a wrong by offensive action? If the difference is because the victim and the conspirators belong to opposing races, logically the question is one of race prejudice instead of the criminal physical injury and the conspiracy to inflict it. In the trial of the issue the murder, arson, or other like crime would be merely incidental to the greater issue, whether there existed race prejudice, a question exclusively for the jury. If we thus reach the idea of race prejudice, so prominent in the indictment, and manifestly of all necessary importance in sustaining the charge, we are amid further difficulties should it be doubtful as to the blood or caste of the victim. In developing the case, assuming an offense is charged, we must inquire whether the blood is sufficiently tainted to remove him from the Caucasian into the negro realm, although the shade of difference is of microscopic nicety; then we in

quire whether race prejudice existed, followed by the next inquiry, whether a conspiracy existed on this specific account, and, lastly, whether a murder was committed. The framers of a constitution, the fundamental law of the greatest of all nations, cannot be supposed to have had in purpose the consideration of such possibilities, which are essential to the life of the indictment, if it charges the denial of a right to the citizen which they sought to protect.

Much is said relative to the denial of a right secured to the citizen. What right of the victim, Maples, is affected by the acts of the conspiring mob which forcibly took him from the custody of the sheriff, who held him under a charge of murder? The indictment charges that these acts were done by the mob "in order that the said Horace Maples might be deprived of the right, privilege, and immunity secured to him under the constitution of the State of Alabama in accordance with and in the manner prescribed by the laws of the State of Alabama."

The laws of Alabama prescribe one method only for the trial of a person under a charge of murder. Maples could only have been legally tried and acquitted, if innocent, or punished, if guilty, by a jury of his peers. The denial of due process of law, of which complaint is made, is the denial of the right to be tried by a jury in the court having jurisdiction as provided by the laws of the State. The amendment, as we understand, has no reference to State procedure in the method of trial, and there is nothing restrictive of the forms of trial which may prevail in a State. An indictment by a grand jury dispensed with by the State law invades no right under the Constitution. A petit jury of any number, instead of the common law twelve in number, is valid, and this is true whether it relates to a part or to the entire State. The whole subject is matter of State requirement, with the amendment has no concern.

This court in an exhaustive discussion of the subject has

announced that trial by jury has never been affirmed to be a necessary requisite of due process of law.

Maxwell *vs.* Dow, 176 U. S., 681 (603).

But it is urged that although the State in dispensing with a trial by jury violates no right of the citizen under the Federal Constitution, yet, the State having provided a system of trial by jury, the prevention of its exercise by an individual or combination of persons operates as a denial of due process of law. It must be without doubt that if the State is under no duty to provide a trial by jury that the failure of jury trial for any reason violates no constitutional right of the citizen.

Hurtado *vs.* California, 110 U. S., 516.
Brown *vs.* New Jersey, 175 U. S., 172.
Bolln *vs.* Nebraska, 176 U. S., 83.
Maxwell *vs.* Dow, 176 U. S., 581.
McNulty *vs.* California, 149 U. S., 645.
Giozza *vs.* Tiernan, 148 U. S., 657.

In Missouri *vs.* Lewis, 101 U. S., 22 (31), the rule is tersely expressed:

"The fourteenth amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line. On one side of this line there may be a right of trial by jury, and on the other side no such right. Each State prescribes its own modes of judicial proceeding. If diversities of laws and judicial proceedings may exist in the several States without violating the equality clause in the fourteenth amendment, there is no solid reason why there may not be such diversities in different parts of the same State. A uniformity which is not essential as regards different States cannot be essential as regards different parts of a State, provided that in each and all there is no infraction of the constitutional provision. Diversities which are allowable in different States are allowable in different parts of the same State.

Where part of a State is thickly settled, and another part has but few inhabitants, it may be desirable to have different systems of judicature for the two portions,—trial by jury in one, for example, and not in the other. Large cities may require a multiplication of courts and a peculiar arrangement of jurisdictions. It would be an unfortunate restriction of the powers of the State government if it could not, in its discretion, provide for these various exigencies."

In the construction of a statute we look to its purpose and intent to ascertain what is meant when it is not fully expressed. Thus we learn what matter is implied. The express language of the amendment is clear, and whatever may exist by way of implication we can only find by first ascertaining the purpose for which the amendment was created. As we have seen, this purpose was to secure to all citizens an equal protection of the laws and to prohibit any effort on the part of the States in adopting laws abridging the privileges and immunities of the citizen, and therefore, in searching for matter of implication, we inquire whether the State is prohibited from doing anything which it would otherwise have the right to do. We cannot suppose that the State would undertake, by affirmative action, to accomplish an impossible task. We further learn from this court that the amendment had no reference to the acts of individuals; it deals with States, denying the rights of the individual. If the State is overpowered, overawed, and overwhelmed by the force of numbers, or keen strategy, when attempting to endow the citizen with every right he desires to claim, must it be said, by way of implication, that the amendment meant if anarchy prevailed the State was recreant in its duty towards the citizen? The physical inability to accomplish any object has never been construed as an affimative declaration that it was an effort to deny the right which was at the time sought to be enforced. There can be no pretense that the State is not abundantly equipped with the power to punish the conspiring mob, and that the

State has made an honest effort to bring each of them to justice.

It is the duty of the State to afford to the citizen due process of law as one of its reserved powers, but it is not an imperative demand made upon the States for affirmative action. In Logan's case, 144 U. S., 263 (289), the opinion of Mr. Justice Bradley, in United States *vs.* Cruikshank, 1 Woods, 308, is quoted approvingly:

"When any of these rights and privileges are secured in the Constitution of the United States only by a declaration that the State, or the United States shall not violate or abridge them, it is at once understood, that they are not created or conferred by the Constitution, but that they shall not be impaired by the State, or the United States, as the case may be. The fulfilment of this guaranty by the United States is the only duty with which that Government is charged. The *affirmative enforcement* of the rights and privileges themselves, unless something more is expressed, *does not devolve upon it, but belongs to the State government as a part of its residuary sovereignty.*"

The amendment, therefore, only prohibits the State from denying to her citizens due process of law, should an effort be made to abridge these rights; and, if the State takes no action, through the agency of her departments, the inhibited power has no part to play in the drama. The usurper who temporarily suspends the power of the State by overwhelming the officers in the attempt to exalt the law, affording to the citizen due process of law and an equal protection of the laws, is not thereby clothed with quasi-statehood, nor does he succeed to the duties of the State. The usurpation of power never becomes rightful, rendering the legally constituted authority responsible for its derelictions of duty or the violations of government rule. The anarchist, with his sputtering fuse and bomb, may momentarily put to flight the police power, yet the municipal or other government does not accept the breach of order as a maintenance of the

law it desires to enforce. If the acts of the mob, the usurper, or the anarchist assume a semi-sovereignty, displacing the State in the exercise temporarily of its governmental functions, mean that the State, an integral part of the union of States—of the United States—has abridged the privileges and immunities of the citizens, we reach a startling and unwarranted conclusion. The trial judge sets forth at length in an able discussion the well-recognized and axiomatic truths demonstrating that the States are prohibited from depriving any person of life, liberty, or property without due process, but we submit that the illogical conclusion is drawn that the citizen is denied due process of law by the State when the State is overpowered in the effort of supreme administration and righteous obedience to the demands of the citizen on its protecting power.

In a recent paper read before the Alabama Bar Association the distinguished judge emphasizes his view, and says:

"When lawless violence of private individuals strikes down the helping hands of the State, while it is endeavoring to afford the right, is not the citizen, in the most liberal sense deprived of his enjoyment of judicial procedure, at the hands of the State?"

There can be only one answer to this inquiry, unless we misconceive wholly the adjudications of this court, the purpose of the amendment, and the conditions which provoked and created it. The citizen may, by such lawless acts, by an overpowering conspiracy of individuals, be deprived of his enjoyment of judicial procedure, but not "at the hands of the State." The State in the full realization of its duty passes no offending law, puts into action the entire machinery of its government for the preservation of order, affording to the accused every facility for a fair and impartial trial every remedy which could be sought or expected, yet the lawless acts are done, the murder is committed—"at the hands of the State?" Surely not! This must be an error,

otherwise the mature words of this court, weighed and balanced, reducing the construction of the amendment to its final and only determinable analysis in the great Cruikshank case, are meaningless, when it is plainly announced, after a most thorough and exhaustive consideration, and in absolute consciousness of its importance and the far-reaching effect to be produced, that it is no more the duty or within the power of the United States to punish for a conspiracy to murder within a State than it would be to punish for murder itself.

Instead of attempting to lay this indictment under section 5508, it would, doubtless, have been preferred under section 5519, if it had not been declared unconstitutional.

United States vs. Harris, 106 U. S., 629.

Congress attempted to put the amendment into operative effect by the passage of the act approved April 20, 1891, from which section 5519 was carved. This statute was designed to meet cases of the present character. It provides:

"If two or more persons in any State or Territory conspire * * * for the purpose of depriving, either directly or indirectly, any person or class of persons, of the equal privileges or immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory the equal protection of the laws, each of said persons shall be punished, * * * by fine or imprisonment."

The end sought by this statute is the same effort that is made by the prosecution under this indictment. We may assume, as a logical sequence, that if the statute violated a constitutional law, that the charge in the indictment, unaided by any statute defining the criminal act, must likewise fall for the want of constitutional authority. In order to sustain the indictment as a charge violating a constitutional right, we must read into or engraft upon the averment employed the words of section 5519

"for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory, the equal protection of the laws."

The averment of denial of "due process of law" in addition to "equal protection of the laws" is immaterial as matter of averment, the principle being the same.

The case of United States *vs.* Harris, *supra*, in comparative review leaves no material constitutional question unsettled in this cause. The indictment charged the defendant and others with conspiring to deprive Robert R. Smith and others, citizens of the United States, of the equal protection of the laws in this, that said Smith and others were in the custody of the deputy sheriff, the lawfully constituted State authority, charged with a criminal offense against the laws of the State, and that said Smith and others were deprived of an equal protection under the law, by the defendant and others, while so under arrest, and that they were beaten, bruised, maimed, and otherwise ill-treated by the alleged conspirators. The question was whether Federal jurisdiction existed for the punishment of the mob, alleged to have been composed of the defendant and others, who, with violence, took from the custody of the State authorities prisoners under legal arrest, and by beating and wounding them deprived them of the equal protection of the laws. The court tells us that the only way in which one private person can deprive another of the equal protection of the laws is by the commission of some offense against the laws which protect the rights of persons, as by theft, burglary, arson, libel, assault, or murder; and we may say that this principle is not altered by the fact that two or more persons are the offenders. The judgment of this court in the Harris case necessarily settles any question arising in the case at bar, whether relative to a denial of due process of law or of an equal protection to the laws. The words of the court are

clear, comprehensive, and unmistakable, when it is said (p. 639):

"The language of the amendment does not leave this subject in doubt. When the State has been guilty of no violation of its provisions; when it has not made or enforced any law abridging the privileges or immunities of citizens of the United States; when no one of its departments has deprved any person of life, liberty or property without due process of law, or denied to any person within its jurisdiction the equal protection of the laws; when, on the contrary, the laws of the State, as enacted by its legislative, and construed by its judicial, and administered by its executive departments, recognize and protect the rights of all persons, the amendment imposes no duty and confers no power upon Congress."

We may challenge refutation that the State of Alabama measures full to the standard here outlined. No complaint of State dereliction arises. Its laws are ample, and its protection as nearly perfect as a government can offer. No criticism can be successfully urged that any law now existing is obnoxious to the amendment. The trend of legislation is within constitutional limits, and the attacks which have been made upon it have been signally vanquished. Likewise are these State laws sufficient to punish the offenders. The denial of the due process of law cannot logically or as a matter of fact be said to exist for the reason the State does not overcome or successfully resist the virulent mob in wresting the prisoner from the clutches of violence. The effort is made to protect or to rescue by the State authorities, fortified by its military, and this ineffectual effort is pronounced a denial of due process of law.

This result, we submit, is not within the range of construction, and certainly the amendment does not, nevertheless, impose the duty nor confer the power upon Congress to intervene by requiring the State to accomplish something outside of governmental power.

The case of Logan *vs.* United States, 144 U. S., 263, gives

no support to the indictment in the case at bar. Quite to the contrary, it recognizes the principle for which we contend, and is in accord with the Cruikshank and Harris cases.

The question in the Logan case was whether the right of a citizen of the United States in the custody of a United States marshal under a lawful commitment to answer for an offense against the United States to be protected against lawless violence is a right secured to him by the Constitution or laws of the United States, or whether it was a right which can be vindicated only under the laws of the several States, and materially different it is from the contention set up by the prosecution that it is the right of the citizen under the Constitution and laws of the United States to be protected against lawless violence when in custody of State officials for the violation of State laws. The Federal court has the power to protect its prisoners and to maintain the dignity of its process. A court impotent to afford protection to its suitors and witnesses or punish the violators of the law within its jurisdiction would be an organization as unique in character as it would be ineffectual in execution. The victims forcibly taken from the custody of the marshal while held under legal process from the Federal jurisdiction charged with the violation of Federal law were entitled to the protection of the court as a right secured to them under the laws of the United States, and this is the principle decided. The case does not conflict with the Harris case, holding that the Federal court is without jurisdiction to hear and determine the guilt or innocence of conspirators or combination of men charged with the offense of violently seizing a State prisoner in the custody of the State under a commitment from a court of the State for the violation of a State law.

Is not this the proposition now before the court? Wherein does it differ in matter of fact or in principle of law? The Cruikshank case was accepted as a final adjudication until

the futile effort was made under section 5519 in the Harris case, therein declared unconstitutional, the offense being a violation of State law.

This court, in Logan's case, *supra*, reaffirming the principles announced in the Cruikshank case, based upon section 5508, states the point of decision so clearly that further argument is unnecessary to show that the indictment charges the violation of no Federal law involving any right to due process of law or of an equal protection of the law. It is said, page 287:

"It was held that a conspiracy of individuals to injure, oppress and intimidate citizens of the United States, with intent to deprive them of life and liberty without due process of law, did not come within the statute, nor under the power of Congress, because the rights of life and liberty were not granted by the Constitution, but were natural and inalienable rights of man; and that the fourteenth amendment of the Constitution declaring that no State shall deprive any person of life, liberty or property, without due process of law, added nothing to the rights of one citizen as against another, but simply furnished an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. It was of these fundamental rights of life and liberty, not created by or dependent on the Constitution, that the court said: 'Sovereignty, for this purpose, rests alone with the States. It is no more the duty or within the power of the United States to punish for conspiracy to falsely imprison or murder within the State, than it would be to punish for false imprisonment or murder itself.'"

Judge Brannon, of the supreme court of West Virginia, concludes a discussion of the subject in forceful terms, and according to the well-nigh universally accepted view of the legal profession:

"The criminal jurisprudence was never granted to the nation, and is left to the States, both because never granted away, and because of amendment ten, saying that all powers, not granted to the nation are reserved to the States.

"It is hardly necessary to say that the amendment does not touch the case of the individual, or mob murder, as it deals, not with acts of individuals, but only with action by the State, through its constituted authorities. Such murders by individuals or mobs, are to be dealt with only by the States."

Brannon's Fourteenth Amendment, p. 108.

As we have seen, the State is clothed with ample jurisdiction for the punishment of murder, whether the guilty be an accessory before the fact or a principal in the first or second degree or a conspirator, by whatever name he may be designated. This jurisdiction was originally retained by the State where it has since always resided, and it clearly appears that this reserved power under the tenth amendment is prohibitive of political legislation in the centralization of the Federal criminal jurisdiction.

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No. 169.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THOMAS M. RIGGINS, APPELLANT,

v.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE NORTHERN DISTRICT OF ALABAMA.

BRIEF FOR THE UNITED STATES.

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THE UNITED STATES. } No. 169.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE NORTHERN DISTRICT OF ALABAMA.

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STATEMENT OF CASE.

This is an appeal from an order of the Circuit Court of the United States for the Northern Division of the Northern District of Alabama denying appellant's petition for a writ of *habeas corpus*.

The petition alleges, in substance, that Riggins was unlawfully restrained of his liberty by the United States marshal for the Northern District of Alabama, for the reason that the indictment under which he was held for trial in said circuit court charged no offense cognizable under the Constitution and laws of the United States. (Rec. 2.)

The indictment was drawn under section 5508 of the Revised Statutes of the United States, which makes it an offense for two or more persons to conspire to injure or oppress, threaten or intimidate any citizen of the United States in the free exercise or enjoyment of any right or privilege guaranteed to him by the Constitution and laws of the United States, or because of his having so exercised the same. It alleges, in substance, that the appellant was one of a mob which forcibly dragged one Maples, a citizen of the United States of African descent, awaiting trial for an offense against the laws of Alabama, from the jail in which he was confined, in custody of a State sheriff and guarded by State militia, and hung him, in pursuance of a conspiracy for the purpose; and that said acts were done on account of his color.

Appellant contends that the courts of the United States have no jurisdiction to punish for a conspiracy entered into for such a purpose; and that it is a matter solely within the jurisdiction of the State courts.

THE STATUTE.

SEC. 5508. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall

be fined not more than five thousand dollars and imprisoned not more than ten years; and shall, moreover, be thereafter ineligible to any office or place of honor, profit, or trust created by the Constitution or laws of the United States.

THE QUESTION OF LAW.

Has a citizen of the United States, in the lawful custody of state officers, upon accusation of crime against state laws, a right secured to him by the Constitution and laws of the United States to be protected from mob violence, when such violence is directed against him on account of his color, and the state has sent militia to protect him and is endeavoring in every possible manner to afford the defendant a fair and impartial trial under the laws of the state?

THE GOVERNMENT'S POSITION.

In our brief, recently submitted in the case of *Hodges et al.* v. *United States*, No. 14, of this term, we considered at some length whether the thirteenth amendment authorized Congress to enact legislation making it an offense for two or more individuals to conspire to deprive a negro of the right to make contracts (and to labor?) solely on account of his color.

In that case we relied upon the constitutionality of section 1977 of the Revised Statutes of the United States, claiming, in substance, that its provisions were a contemporaneous construction of the thirteenth amendment, and that the power to enact appropriate legislation authorized the Congress to protect a colored man from the deprivation of one of the rights which inhere in

freedom—like the right to make a contract—when the exercise of the right was interfered with solely because of his color. In this case, unlike the Hodges case, there is *no statute* of the United States guaranteeing the right to be secure from mob violence, and, as appears from appellant's brief (p. 21), bills for the protection of such a right have been considered by the Congress, but have not been enacted. So far as this case can be supported under the thirteenth amendment, we submit it upon our brief filed in the Hodges case, as far as applicable, and upon the opinion of the learned judge in the court below. (R., pp. 17 et seq.)

This case is unlike the Hodges case in another particular. In the Hodges case the fourteenth amendment could not be invoked. In this case the learned judge, who dismissed the appellant's petition, took the view that, because the State had begun proceedings against Maples, had indicted him and held him awaiting trial, *he had a right secured by the fourteenth amendment* to be tried by the State. In the learned judge's opinion, the mandate of that amendment, "nor shall any State deprive any person of life, liberty, or property without due process of law," is held to be equivalent to a declaration that all persons, upon accusation of crime against State laws, *have the right to receive* a trial according to its established course of criminal procedure; and if individuals conspire to deprive him of the right, section 5508 of the Revised Statutes of the United States was intended to give the courts of the United States jurisdiction to punish them.

With reference to this argument, we respectfully submit the case upon the opinion of the learned judge in the lower court (Rec., p. 17 et seq).

The logic by force of which such a case as the present should be brought within the meaning and protection of the Constitution is stated most earnestly and cogently by the able judge below, who speaks with peculiar qualifications for forming a right and a large view of the entire race situation. His opinion of course registers an advance in this controverted field. Throughout the history of the world there are numerous impressive instances of the fact that what was formerly regarded as strange, revolutionary, or heretic was later an accepted commonplace of truth and justice for all future time. The large view, the advanced view, turned out to be the sound view, the just view. We can add nothing to the force of Judge Jones's reasoning and conclusion.

MILTON D. PURDY,
Assistant to the Attorney-General.

OTIS J. CARLTON,
Special Assistant to the Attorney-General.

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Supreme Court of the United States.

No. 169.—October Term, 1905.

Thomas M. Riggins, Appellant, vs. The United States. } Appeal from the Circuit Court of the United States for the Northern District of Alabama.

[December 11, 1905.]

Riggins and Powell were indicted under §§ 5508, 5509, Revised Statutes, in the District Court for the Northern Division of the Northern District of Alabama, at the October Term, 1904, thereof; and on the twenty-fourth day of October, 1904, the indictment was remitted to the next session of the Circuit Court in and for that Division and District by order of the Circuit Court, the District Judge presiding. A capias was issued to take Riggins into custody to answer the indictment, October 26, 1904. On the same day a severance was ordered as between Powell and Riggins, and thereupon Riggins filed his petition for *habeas corpus;* the writ was issued; the marshal made his return; the Circuit Court, held by the District Judge, heard the case and discharged the writ and remanded Riggins to custody; a bill of exceptions was signed and sealed, and an appeal to this court was prayed, allowed and perfected, by the giving of a bond in the penal sum of two hundred and fifty dollars, which was approved by the judge; certificate of certain questions of jurisdiction was filed; as also assignments of error; and a citation was issued and served; all on the said twenty-sixth day of October, 1904. The opinion of the District Judge will be found reported 134 Fed. Rep. 404.

The petition for *habeas corpus* alleged that Riggins was restrained of his liberty by the United States marshal under the capias issued on the indictment, a copy of which capias was attached, as also a copy of the indictment. That indictment in brief set up that Riggins and others entered into a conspiracy to take one Maples, a citizen of the United States of African descent, from the State officers, to whose custody he had been lawfully committed under a charge of murder, and to hang him until he was dead, and that said conspiracy was formed and its purpose executed because Maples was of African descent. The petition averred that the indictment charged no offense punishable under the laws of the United States; that the indictment did not show that Riggins had violated any right, privilege or immunity guaranteed to Maples under the Constitution of the United States; or that any Federal law was violated providing for

the punishment of such offense; and that it did not appear from the indictment that the conspiracy, combination or confederation therein alleged was formed or entered into under any law of the State of Alabama, or that any law of that State authorized its citizens or other persons to enter into any conspiracy to injure, threaten or oppress Maples by denying to him, by reason of his race, the right, privilege and immunity of a trial by jury to determine his guilt or innocence on an indictment for murder pending against him in the courts of Alabama.

Mr. Chief Justice FULLER delivered the opinion of the Court:

It is settled that the writ of *habeas corpus* will not issue unless the court under whose warrant petitioner is held is without jurisdiction, and that it cannot be used merely to correct errors. Ordinarily the writ will not be granted when there is a remedy by writ of error or appeal, yet in rare and exceptional cases it may be issued, although such remedy exists.

In *New York* v. *Eno*, 155 U. S. 89, it was held that Congress intended to invest the courts of the Union and the justices and judges thereof with power upon writ of *habeas corpus* to restore to liberty any person within their respective jurisdictions held in custody, by whatever authority, in violation of the Constitution or any law or treaty of the United States; that the statute contemplated that cases might arise when the power thus conferred should be exercised during the progress of proceedings instituted in a State court against the petitioner on account of the very matter presented for determination by the writ of *habeas corpus;* but that the statute did not imperatively require the Circuit Court by that writ to wrest the petitioner from the custody of the State officers in advance of his trial in the State court; and that while the Circuit Court had the power to do so, and could discharge the accused in advance of his trial, if restrained in violation of the Constitution, it was not bound in every case to exercise such power immediately upon application being made for the writ. The conclusion was that in a proper exercise of discretion the Circuit Court should not discharge the petitioner until the State court had finally acted upon the case, when it could be determined whether the accused, if convicted, should be put to his writ of error or the question determined on *habeas corpus* whether he was restrained of his liberty in violation of the Constitution of the United States.

These principles were fully discussed in the cases of the appeals of Royall from judgments in *habeas corpus* in the Circuit Court of the United States for the Eastern District of Virginia. 117 U. S. 241. And in addition Royall made an original application to this court for a writ of *habeas corpus*, which was denied upon the grounds stated in the previous cases. 117 U. S. 254.

While special reasons may exist why this should be the rule in respect of proceedings in State courts, which are not applicable to cases in the courts of the United States, nevertheless we have frequently applied the same principle to such cases. *In re Chapman*, 156 U. S. 211; *In re Lancaster*, 137 U. S. 393; *In re Huntington*, Id. 63; *Ex parte Mirzan*, 119 U. S. 584.

In Chapman's case we held that it was a judicious and salutary general rule not to interfere with proceedings pending in the courts of the District of Columbia or in the Circuit Courts of the United States in advance of their final determination. And we said:

"We are impressed with the conviction that the orderly administration of justice will be better subserved by our declining to exercise appellate jurisdiction in the mode desired until the conclusion of the proceedings. If judgment goes against petitioner and is affirmed by the Court of Appeals and a writ of error lies, that is the proper and better remedy for any cause of complaint he may have. If, on the other hand, a writ of error does not lie to this court, and the Supreme Court of the District was absolutely without jurisdiction, the petitioner may then seek his remedy through application for a writ of *habeas corpus*. We discover no exceptional circumstances which demand our interposition in advance of adjudication by the courts of the District upon the merits of the case before them."

In *In re Lancaster*, this court denied an application for leave to file a petition for *habeas corpus* in the circumstances stated in the opinion, which opinion was as follows:

"The petitioners were indicted under sections 5508 and 5509 of the Revised Statutes, on the 20th of November, 1890, in the Circuit Court for the Southern District of Georgia, and have been taken into custody. They have not invoked the action of the Circuit Court upon the sufficiency of the indictment by a motion to quash or otherwise, but ask leave to file in this court a petition for a writ of *habeas corpus*, upon the ground that the matters and things set forth and charged do not constitute any offense or offenses under the laws of the United States, or cognizable in the Circuit Court, and that for other reasons the indictment cannot be sustained. In this posture of the case we must decline to interfere."

We are of opinion that the rule therein laid down should have been followed by the Circuit Court.

True, the present case is not one of the issue of the writ of *habeas corpus* in respect of confinement under State authority, nor of an application to this court for the writ, but is the case of custody taken under a capias issued on an indictment returned in the District Court and removed to the Circuit Court, and an application to that court for the writ before defendant had been compelled to take any step in the cause.

Defendant might have raised his objections to the indictment by motion to quash or otherwise. If the indictment were held good, as we are advised by the opinion of the Circuit Court it would have been, defendant

would have pleaded and gone to trial, and might have been acquitted. If convicted, the remedy by writ of error was open to him.

There is nothing in this record to disclose that there were any special circumstances which justified a departure from the regular course of judicial procedure. That departure is contrary to the views we have heretofore explicitly expressed, and if we acquiesce in this method of invoking our jurisdiction, we shall find ourselves obliged to decide questions in advance of final adjudication, contrary to the settled rule, and to many decisions we have heretofore announced upon the subject.

If we should affirm or reverse the final order in this case, we should recognize a proceeding below, which we would not ourselves have entertained; and we are not disposed to hold that this manner of testing such questions as are argued here ought to have been pursued.

Final order reversed and cause remanded with a direction to the Circuit Court to quash the writ of habeas corpus and dismiss the petition without prejudice.

True copy.

Test:

Clerk Supreme Court, U. S.